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WITNESSES

WEDNESDAY, OCTOBER 20, 1993

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE APPENDIX

H.R. 3235, THE ANTIMONEY LAUNDERING ACT OF 1993

WEDNESDAY, OCTOBER 20, 1993

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS
SUPERVISION, REGULATION AND DEPOSIT INSURANCE,
COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:10 p.m., in room 2128, Rayburn House Office Building, Hon. Stephen L. Neal [chairman of the subcommittee] presiding.

Present: Chairman Neal, Representatives Vento, Klein, Hinchey, McCollum, Grams, Bachus, and Huffington.

Chairman NEAL. I would like to call the hearing to order at this point.

This spring the full Banking Committee held hearings on the government's efforts to combat money laundering. Those hearings were part of Chairman Gonzalez' efforts to conduct a comprehensive review of the Antimoney Laundering Programs, and I commend him for those hearings.

As a result of what we learned at those hearings, I joined with Chairman Gonzalez in introducing H.R. 3235 last month. Chairman Gonzalez has submitted a written statement for today's hearing and I ask unanimous consent that his entire statement be included in the record.

Without objection it is so ordered.

The legislation is designed to address two major problems that were identified at the hearings. First, it was clear that the Bank Secrecy Act, the major piece of legislation directed at combating money laundering, was generating an ever-rising flood of paper. Filings of currency transaction reports by banks have increased more than 10 percent a year for each of the last 8 years. This year, filings will top 9 million reports on a half-trillion dollars of volume.

Reports that have no law enforcement value waste money of both banks and the Treasury. According to the General Accounting Office, it costs banks anywhere from $3 to $18 per report to file a CTR. It costs the Treasury $2 to process each report.

Last year banks filed more than 1,000 or more CTRs on each of the 657 largest businesses in the United States. These filings accounted for 2.3 million CTRs, or 25 percent of all CTRs filed. Those CTRs, filed on reputable and well-known retailers, supermarkets, and others, have no enforcement value.

H.R. 3235 recognizes that fact. Working with the Treasury Department, Chairman Gonzalez and I have developed a goal of reducing CTR filings by 30 percent.

The reduction in filings is aimed at enhancing law enforcement. Unnecessary filings make the job of law enforcement harder, not easier. By eliminating unnecessary filings, the value of the remaining filings is enhanced. The Treasury will be able to take the resources that currently go to handling needless paperwork and use them for productive law enforcement activities.

The bill contemplates two means of meeting that goal, while recognizing that the Treasury should have the flexibility that regulators need to meet changing conditions.

First, the bill requires that the Treasury develop and publish a list of persons on whom no CTRs need to be filed. This will enable banks to know without a doubt that they need not file any CTRs on supermarket X or retailer Y.

Second, banks will be able to submit proposed exempt lists to Treasury for approval. Again, this will eliminate any uncertainty or hesitation on the part of financial institutions to exempt institutions since such exemptions would be approved by Treasury. Law enforcement benefits because Treasury decides who is on each institution's exempt list and has a veto over the exempt lists.

The second major problem identified at the hearings was the increasing use of nonbank financial institutions by criminals for laundering money.

By and large, depository institutions do an excellent job of complying with the Bank Secrecy Act. Indeed, this success in compliance is one reason why CTR filings have been increasing at double digit rates year after year.

Criminals recognize that they must be able to convert their cash into other assets. With the doors of depository institutions being slammed in their faces, they look for other means of laundering their cash.

Our success in making money laundering more difficult, especially through banks, has driven the launderers to rely increasingly on using nonbank means of money laundering. Cash must now be laundered through seemingly legitimate enterprises such as check cashers, jewelry or liquor stores, or other activities to make the cash seem as if it has come from legitimate sources.

H.R. 3235 recognizes the problem and would encourage the States to develop uniform laws to license and regulate check cashing, money transmitting, currency exchange, and other similar businesses. This provision is similar to one which has passed the House three times in the last two Congresses. I hope this will be the year in which this provision is finally enacted.

Our hearing today gives us the opportunity to hear from the administration and industry on H.R. 3235. I look forward to moving antimoney laundering legislation and the comments we receive today will enable us to hone the legislation so that we have a bill that produces more efficient and effective antimoney laundering enforcement.

Before beginning, I would like to recognize our distinguished ranking minority Member, Mr. McCollum.

[The prepared statement of Mr. Gonzalez can be found in the appendix.]

Mr. MCCOLLUM. Well, thank you very much, Mr. Chairman.

Money laundering is the lifeblood of any criminal drug enterprise. Since we started focusing on bank involvement in this crime, we have seen bank compliance increase dramatically.

Launderers are a creative bunch of folks. I think we all know that they have started using nonbanks and foreign banks to accomplish many of their goals. Nonetheless, the bank reporting requirements that we have enacted into law in order to give tools to law enforcement in the money laundering area are a very important part of the war against drugs and also in the effort to stop this kind of continuing criminal enterprise.

In response to some changing behavior of money launderers and out of concern for the tremendous amount of paperwork involved in this process for the financial services community, Chairman Gonzalez has introduced H.R. 3235 which we are examining today.

The bill appropriately attempts to reduce the regulatory burden that CTRs place on banks. Currently, over 9 million CTRs are being filed annually. Only a minuscule number of these are being used for law enforcement purposes; and the chairman's proposal to reduce by 30 percent the number of CTRs filed is a good goal and a good objective.

I would recommend that we consider also raising the reporting threshold above the current $10,000 amount, although I don't know what the agencies have to say about it. I certainly am open-minded on the subject. It seems to me that this would be significant considering how little CTRs are used in spite of their burden on the industry.

The chairman's bill would also bring attention to money transmitters and negotiating instruments from foreign banks, two areas that Chairman Gonzalez investigated in Texas as additional sources of laundered funds. I commend the chairman of the full committee and, generally speaking, I support his bill.

So today I look forward to the comments that may be made about it. Perhaps there are areas of it that we need to be concerned about, and maybe there are other things that need to be added to this bill while we are at it.

I am going to say up front, Mr. Chairman, that I have got to be at a meeting at 2:30 o'clock for about 20 minutes, so whatever witnesses are there, I hope it isn't Mr. Noble, it may well be you, I may be gone during a portion of your testimony but I beg your forgiveness on that.

Thank you.

Chairman NEAL. Thank you, sir.

Mr. Klein.

Mr. KLEIN. Thank you very much, Mr. Chairman.

First of all, I want to commend both you and Chairman Gonzalez for your leadership in this very, very important area. Obviously, money laundering not only has a tremendous financial and fiscal impact to the Nation, but clearly is a great ally for those who are engaged in illicit drug transactions and other criminal activity; and your legislation is going to be an important weapon in the battle against that criminal activity.

I did want to take the opportunity, however, to recognize the presence of several people from my home State of New Jersey. First of all, our distinguished Assistant Secretary, the first witness, Mr. Ron Noble, is a resident of New Jersey. At least I hope he still votes in New Jersey.

And in addition to that, on his right, Ms. Faith Hochberg is one of the most distinguished members of the New Jersey bar and a very respected and dear colleague of mine who also is from New Jersey and from my part of the State.

And finally I would like to recognize a constituent of mine who is one of the leaders in the check-cashing industry, Mr. Howard Montlebaum. I hasten to add, however, Mr. Chairman, that the large number of New Jersey people who are here in connection with this particular bill is no indication that New Jersey or New Jerseyans are expert in money laundering. They are experts in stopping money laundering.

Chairman NEAL. All right. I knew that was true, Mr. Klein.

Mr. KLEIN. Thank you, Mr. Chairman.

Chairman NEAL. Thank you, sir. Mr. Grams.

Mr. GRAMS. Thank you very much, Mr. Chairman, for recognizing me and also for holding this important hearing today on the Antimoney Laundering Act of 1993, and I would like to welcome all of our witnesses today and in particular I would like to welcome Ms. Janice Mileo who is from Minnesota. Ms. Mileo serves as vice president and corporate counsel for Travelers Express Co., the Nation's largest issuers of money orders, which is headquartered in Minneapolis. And in this position Ms. Mileo is recognized as an expert on the subject of money laundering, and I am sure that her testimony here today will be a valuable asset in our efforts to combat money laundering wherever and whenever it may occur.

I am also particularly interested in hearing about the issue that Ms. Mileo will be raising regarding the need to clarify the definition of a money transmitting business. I also hope that the subcommittee will pay special attention to this aspect of the legislation, as well.

Ms. Mileo, I want to apologize also because since much of the House business may require me to leave a little bit earlier today as well as Mr. McCollum, but I have had the opportunity to read your prepared remarks in advance and also I hope I can count on your counsel on this or any of the other issues facing the financial services industry.

So, again, I want to welcome you and our other witnesses here today and again, Mr. Chairman, thank you very much for yielding to me this time and holding this hearing today.

Thank you.

Chairman NEAL. Thank you. Now, it will be a pleasure to hear from you, Mr. Noble. We will put your entire statement in the record and ask that you summarize so we have a little time for questions and answers.

Again, I would like to point out that the Honorable Ronald Noble is the Assistant Secretary for Enforcement, Department of Treasury. Mr. Noble, I see you have someone with you. Would you like to introduce her?

STATEMENT OF HON. RONALD K. NOBLE, ASSISTANT SECRETARY FOR ENFORCEMENT, DEPARTMENT OF THE TREASURY; ACCOMPANIED BY FAITH S. HOCHBERG, DEPUTY ASSISTANT SECRETARY, ENFORCEMENT

Mr. NOBLE. Yes. My Deputy, Faith Hochberg.

Chairman NEAL. Good.

Mr. NOBLE. Chairman Neal and members of the committee, the Department of the Treasury is happy to have an opportunity to testify on H.R. 3235, the Antimoney Laundering Act of 1993, and to update the subcommittee on Treasury's activities in the field of money laundering.

The last few months have seen unprecedented activity at Treasury. As I promised before the full committee last May, Treasury has established a Money Laundering Review Task Force staffed by experienced agents, analysts, and regulators from every component of Treasury with money laundering responsibilities. For the first time in 20 years, we are taking a comprehensive look at our antimoney laundering programs, especially the way we exercise our authority under the Bank Secrecy Act.

To lead this initiative, we are fortunate to have Mark Matthews, formally Deputy Chief of the Criminal Division of the U.S. Attorney's Office, Southern District of New York. Mark has extensive experience in prosecuting money laundering crimes.

As you know, H.R. 3235 was developed in close cooperation with our staff. It arises from many of the concerns that caused Treasury to establish the Money Laundering Review Task Force, in particular, that aspects of our regulatory programs have become dated, inefficient, have created undue burdens on the Nation's financial institutions, and are in need of substantial revision.

The bill, in particular section 2, addresses how to reduce the data base of Currency Transaction Reports filed by financial institutions. This year, as has been noted already, we expect 9 million CTRs to be filed. Banks are filing millions of reports annually on transactions for account holders, which they may exempt under Treasury regulations.

There are several causes for this phenomenon. First, the Treasury procedures for exemptions are cumbersome and difficult to understand. Often it is easier to file than to apply for and maintain exemptions. Second, as banks automate their BSA programs, it may be just as cost effective to file on all transactions. Third, banks are also concerned that if they improperly exempt transactions, they may be subject to BSA civil penalties by Treasury.

The bill sets some broad and sensible outlines for Treasury's revision of the exemption process with burdens shifting from the banks to Treasury.

The bill also requires that the Secretary reduce CTR filings by banks by at least 30 percent and eliminate from the CTR form information of little value to law enforcement.

These two steps—increasing those exempt from reportings, and reducing the amount of information filed—will move us to our goal of achieving a simpler and more valuable system to address the money laundering problem.

The task force is also focusing on the issue of suspicious transaction reporting. An essential complement to currency reporting is

the reporting of suspicious activity to law enforcement by financial institutions. While banks have been taking this responsibility to heart in recent years, the government's response, in our view, has been unsatisfactory.

Treasury and this subcommittee have heard the complaints of financial institutions that the reporting is too complicated and that the records are being ignored. The proposal in section 3 is an expression of the subcommittee's concern. And we recognize that.

We must move toward a less burdensome and more effective means for reporting suspicious transactions. The task force's initial thoughts are that Treasury should develop a simple form for reporting possible money laundering or BSA violations to be used for cash and noncash transactions, by both banks and nonbank financial institutions. The reports would be filed with Treasury and shared with other law enforcement agencies and provided to financial institution supervisors.

Drawing your attention to section 5. Section 5 of the bill addresses an important expansion of reporting to Treasury—cross-border transportations of "monetary instruments" in excess of $10,000. The provision expands the definition to include instruments drawn on or by foreign financial institutions abroad whether or not in bearer form.

This is a response to the problem of drug money laundering through foreign bank drafts. Drug money launderers smuggle bulk currency or transmit it through a nonbank financial institution to foreign banks. They then purchase bank drafts or checks from the foreign banks. These instruments are easily transportable back into the United States and thereafter negotiated.

Treasury believes that subjecting the instruments to cross-border reporting will contribute to deterring and detecting their use as money laundering vehicles.

Section 6 directs the Secretary to delegate the authority to assess BSA civil penalties to the Federal banking agencies.

We agree and will consider delegation not only to the banking agencies, but to the IRS for the nonbank financial institutions.

Turning to sections 7 and 8. Sections 7 and 8 address the problem of money laundering through certain nonbank financial institutions. As banks have become more effective in prevention and detection of money laundering, money launderers have turned to the financial services offered by a variety of nonbank financial institutions from casas de cambio to money transmitters and check cashers.

These institutions are subject to BSA recordkeeping and reporting, with compliance and examination authority resting with the IRS Examination Division. While IRS has bolstered resources for this function, the task is daunting. Estimates range from 50,000 to 150,000 of these institutions nationwide. The job cannot be done by Treasury or IRS alone. The subcommittee apparently agrees.

Section 7 provides that there be uniform licensing and regulation of non-bank financial institutions including provisions under State law for penalties for failure to implement BSA Compliance Programs and for failure to obtain a license. The Secretary of the Treasury is to report to Congress on the progress made by the States in this area. We think this project will be worthwhile.

In a companion measure, section 8 requires Federal registration of nonbank financial institutions with Treasury. This should result in the reliable identification of all nonbank financial institutions and a foundation for identifying or eliminating illegitimate ones.

Turning to the casinos. Sections 9 and 10 address two casino-related BSA issues. First, the bill specifies that Indian casinos may be designated by the Secretary as financial institutions under the BSA. Tribal casinos would logically be vulnerable to money laundering and tax evasion to the same extent as nontribal casinos.

Section 10 would revoke the 1985 exemption granted to Nevada casinos. The exemption was granted at the time upon the Secretary's finding that Nevada had at that time a regulatory system which substantially met the BSA reporting and recordkeeping requirements for casinos. Under the agreement, the casinos file the equivalent of Currency Transaction Reports with the State. Nevada then forwards the reports to the IRS where they are processed and included in the BSA data base.

In view of differences between the Federal and Nevada systems, we will be discussing the terms of the exemption with the State of Nevada. In fact, my deputy will be flying out there next week to meet with the various casino representatives involved.

At the same time, the task force is assessing the Nevada agreement and the regulatory burden on casinos generally across the board. We have reservations about seeking a legislative solution to this issue while the matter is under review.

Turning to other legislative measures. There are a few other legislative actions necessary for Treasury Antimoney Laundering Programs.

For example, Treasury believes that changes are needed to the BSA summons authority to make it a more effective tool to investigate BSA violations.

A second area regards an amendment made by this subcommittee in 1986 which specifies that the warrantless border search authority of the Customs Service extends to searches of unreported currency or monetary instruments. As BSA compliance by banks has improved, smuggling of bulk currency and monetary instruments, such as money orders, has become rampant. However, the Postal Service has taken the position that this authority does not extend to letter class mail and packages. This creates a significant loophole in the view of the Department of the Treasury.

We have been working, however, with the U.S. Postal Service on a legislative solution. We hope to be able to provide the subcommittee with statutory language that will protect legitimate privacy interests in outbound mail without sacrificing law enforcement's ability to seize the illegal-source currency and monetary instruments.

Finally, there are two provisions pending with the House Ways and Means Committee introduced by Congressman Pickle earlier this year.

The first relates to the use and dissemination of reports of cash by trades or businesses under section 6050I of the Internal Revenue Code. Currently, the tax disclosure provisions limit the use of these reports for tax enforcement purposes. Temporary authority to disseminate to Federal agencies for criminal purposes expired last

November. Since that time, the analytic work of FinCEN and other investigative agencies has come to a standstill.

The second provision would give IRS the authority to be exempt from certain fiscal provisions in their conduct of large-scale undercover operations. Other investigative agencies have this authority, without which such operations are cost prohibitive.

In conclusion, we welcome the subcommittee's partnership with the Treasury in improving the efficiency and effectiveness of our programs. Treasury and the committee are working toward a common goal: Better balance and perspective on the roles and responsibilities of government and financial institutions in the fight against money laundering and better deployment of our respective skills and resources.

Mr. Chairman, members of the subcommittee, Ms. Hochberg and I are prepared to answer any questions you may have.

[The prepared statement of Mr. Noble can be found in the appendix.]

Chairman NEAL. Thank you. I just want to make sure that everybody understands that our full committee staff, our subcommittee staff, and you and your staff have all worked together in developing this bill and we lean heavily on your experience and suggestions with the bill.

Now, as I understand it, I am not aware of anyone who is really against this legislation, except maybe the Cali Cartel, but we haven't invited them. If I am wrong about that, if someone has objections to it, we certainly want to hear them.

I think you have made a good statement and I think what we have done here so far makes a lot of sense. I don't see flaws with it, but there again I am no expert in this, so I defer to others to see how we can do it better. We welcome their thoughts on it.

Just a question that I had as we went through it. One of the provisions of the bill has the States developing enforcement standards for dealing with check-cashing operations and so on, and it sounds like to me we are passing the buck over to them. But I think as a matter of tradition, we do leave law enforcement in that area to the States. And there are—I don't know what—150,000 of these things. I don't know how we would realistically deal with them with a Federal agency anyway. So I think that probably is a sensible way to deal that.

Mr. NOBLE. We agree, Mr. Chairman. We agree.

Chairman NEAL. What was it you were saying about the casinos that you said that you were still working with them?

Mr. NOBLE. The bill eliminates the current exemption for Nevada casinos. And as you know, Mr. Chairman, the Money Laundering Task Force is trying to look at our whole program with regard to dealing with money laundering and one of the things we would like not to do at this point, though we understand the chairman and the subcommittee's concerns in this area, is we would like not to answer one aspect of a problem or address one aspect of the problem without looking at the entire problem of our antimoney laundering efforts.

We have this task force underway. Admittedly, hearings like this push us forward, make us work harder and faster then we otherwise might, and I think those goals are laudable. At this point, I

think we would like the opportunity not to say yes on an issue that is currently under review by the task force until such time as all aspects have been considered.

Chairman NEAL. How long will that be?

Mr. NOBLE. How long? Sooner rather than later. Months.

Chairman NEAL. We would want to include your recommendations in the bill. Is that the idea? You would want to or not want to?

Mr. NOBLE. To be candid, we would prefer not to have our recommendations in the bill.

Chairman NEAL. This has to do specifically with casinos.

Mr. NOBLE. Absolutely, sir.

Chairman NEAL. I don't think that is within our jurisdiction anyway.

Mr. NOBLE. From our perspective, Mr. Chairman, this is a power the Secretary of the Treasury has. This is something we can do internally in the executive branch and we would like to reserve that option and have flexibility if at all possible.

Chairman NEAL. How about the Indian casinos?

Mr. NOBLE. With the——

Chairman NEAL. Is it your position that legislation covering Indian casinos——

Mr. NOBLE. We support that.

Chairman NEAL. Is unnecessary or necessary.

Mr. NOBLE. It is necessary. Nevada is unique. Nevada entered into an agreement with the Secretary of the Treasury long ago because of Nevada's unique situation.

Now, admittedly, things have changed. That is why we have this review. With regard to the Indian casinos, there is no reason for us at this point to say that they ought to be exempted when we believe compliance would address the potential problem of money laundering.

Chairman NEAL. OK. Mr. Bachus.

Mr. BACHUS OF ALABAMA. Thank you, Mr. Chairman.

First, I would like to commend Chairman Gonzalez and you, Chairman Neal, for your work on this bill. I think it is a good piece of legislation.

I think the CTR reporting requirements need to be revised and I think this legislation has appropriate revisions. I think that is why we are having this testimony to determine if these are appropriate, but they appear to me to be a good approach.

I have got two questions. One deals with the recent rise in counterfeit U.S. dollars being manufactured overseas. Do you have any suggestions for any provisions that you might suggest, add in, in the CTR legislation or in the CMIR report to address—to make it, say, easier for bank tellers to identify these counterfeit bills?

Mr. NOBLE. With your permission, sir, I would appreciate very much if I could have the opportunity to talk to you about this privately, or not in an open hearing, to discuss with you some of the aspects the Department of the Treasury is examining with regard to the counterfeiting problem generally. With your permission, I would appreciate that.

Mr. BACHUS OF ALABAMA. I very much welcome that, and you know with a mind to see if there is anything we need to do, maybe

while we are addressing money laundering, to go ahead and put some of those provisions in together.

Mr. NOBLE. I understand, sir.

Mr. BACHUS OF ALABAMA. Thank you. Second, there is a provision in here where we published the names of exempted businesses. Will this in any way cause money launderers—you know they are going to know what businesses are exempted. You think that will cause them to seek these businesses out as places to launder money?

Mr. NOBLE. That is obviously a concern one would have generally and in theory and we applaud your ability to see that. We know that the money launderers will see that. But what we hope is that the exempted businesses will have such internal controls and the ability to guard against it on their own that though they might launder money in these businesses, the chances are they probably won't or we could deal with it in that regard.

So from our perspective, there are a number of these businesses that are generating the millions and millions of CTRs which are making it difficult for us to examine any of those meaningfully, while we are placing tremendous burdens on banks. So what we are trying to do is encourage the banks, as this subcommittee is trying to do with the bill, to exempt businesses where we believe the threat of money laundering isn't as great as the cost and the burden on the institutions involved.

But your concern is well taken, sir.

Mr. BACHUS OF ALABAMA. You might just sort of revisit that and tell us if there is anything that we could do to lessen the impact.

Mr. NOBLE. One option that we have is that the Treasury Department on its own will determine what company or what category of businesses is exempted, if through out intelligence gathering or investigative processes, we determine that in fact we have created a loophole and all the money launderers are going there. First thing we will do is round them up, arrest them, and prosecute them and afterwards maybe eliminate these businesses from the exempted category.

Mr. BACHUS OF ALABAMA. Fine. I appreciate that.

Mr. NOBLE. Thank you, sir.

Chairman NEAL. What is the law concerning money laundering generally? What kind of prohibitions are there against money laundering?

Mr. NOBLE. Generally, sir, it is—of course, we know that most crime is motivated through the desire for profit, so you need an underlying illegal activity which generates some kind of proceeds. And in order for the proceeds to be valuable, you want to put them in a kind of business or some kind of association which separates them from the underlying criminal activity. You launder the money, that way you separate it from the crime. That is what money laundering deals with. Following the money, which is a lot easier to trace than tracing the criminals who are actually trying to get the drugs. That is why we have the antimoney laundering laws.

Chairman NEAL. I didn't make my question clear. Is there some generic law against money laundering?

Mr. NOBLE. Title 18, United States Code.

Chairman NEAL. What does that say?

Mr. NOBLE. Sections 1956 and 1957, it essentially says that if you generate proceeds through illegal activity, then the generation of those proceeds and the putting of those proceeds in any kind of business or entity is a crime.

Chairman NEAL. Well, is the crime the illegal activity.

Mr. NOBLE. No, with money laundering the actual placing of the illegal——

Chairman NEAL. The crime is the placing of money illegally gained——

Mr. NOBLE. Exactly.

Chairman NEAL. Into commerce or transmitting it somehow.

Mr. NOBLE. Exactly.

Chairman NEAL. That is a Federal——

Mr. NOBLE. That is a Federal statute; that is correct.

Chairman NEAL. What kind of penalties does that carry?

Mr. NOBLE. It depends on the sentencing guidelines. It depends really on the amount of money involved. So it is a felony, first point, and the penalties can be multiple years without any question depending upon the volume of money laundered.

Chairman NEAL. So there are ongoing efforts to detect and deter money laundering other than what we are talking about here today in terms of reporting.

Mr. NOBLE. Yes. What we are trying to do, sir, with both our antimoney statute and our civil forfeiture statute, is to say when your motive is profit, ordinarily we can get the money and the assets you buy through forfeiture; that is, decrease or deter you from doing it because the motive is somewhat reduced if you can't have the assets, that is one way to do it. Also, to punish you criminally for not only having committed the underlying crime but for actually laundering the money and maybe enticing people who don't prefer to deal with drugs, but would be happy to take drug proceeds and put them in a business to launder them. We really have that dual approach to the criminal and the civil forfeiture.

Chairman NEAL. Mr. Klein.

Mr. KLEIN. Thank you very much, Mr. Chairman.

I have a couple of questions, Mr. Secretary, regarding the casinos; and you will excuse me for my lack of sophistication in this area. I am the one New Jerseyan who doesn't know anything about the money laundering.

Let me ask you the question this way. Is the casino industry presently subject to Federal money laundering legislation?

Mr. NOBLE. With the exception of Nevada, casinos generally are.

Mr. KLEIN. What about, for example, the New Jersey industry?

Mr. NOBLE. Yes.

Mr. KLEIN. It is subject to Federal legislation?

Now, this section 9 says that any gaming establishment with an annual gaming revenue of more than $1 million—becomes subject to the law. I would assume any casino in New Jersey would be in that category.

Mr. NOBLE. Absolutely.

Mr. KLEIN. How does this change the law?

Mr. NOBLE. It changes the law in two ways. One is the Indian casino situation, they would come under Federal regulations, as well; and it also eliminates the Nevada exemption.

Mr. KLEIN. I see. Turning to a slightly different subject. In the subcommittee report to us, the informal report, I see a statement that Federal officials estimate that a $100 billion to $300 billion is laundered annually. I assume that that figure is in fact your estimate. Is all of that—in the view of the Treasury Department, generated by illegal criminal activity or is some of the money laundering generated from activity which is not necessarily criminal in nature?

Mr. NOBLE. It is all really, sir, by definition generated by illegal activity.

Mr. KLEIN. If we can better control money laundering, does that give us an opportunity to also capture revenues in the form of income taxes.

Mr. NOBLE. Absolutely. Absolutely.

Mr. KLEIN. Does the Treasury have any estimates as to how much tax revenue we lose as a result of that $100 billion to $300 billion annually laundered?

Mr. NOBLE. I am going to turn to my expert in this area, my deputy, Faith Hochberg. I have been waiting for a curve ball to allow her to take over in answering and this is an appropriate one, sir.

Ms. HOCHBERG. I knew he would do it to me on a question like this. What we would appreciate the opportunity to do is to ask FinCEN to provide us with that data for you and we would get it to you just as quickly as we can after this hearing.

I don't have a specific dollar amount because obviously there are lots of assumptions built into how much revenue one could collect from the various criminal enterprises that created the money that led to this money laundering.

Mr. KLEIN. Well, one of the reasons I asked the question is because in various meetings that I have had with CPAs, one of the things that is repeatedly brought up is the question of nonreporting of income, cash income. And they feel that there is a huge, huge hole there and an opportunity to tax a lot of revenue that goes unreported. What I am wondering is whether this legislation aids in that effort; and second, whether there is anything else that we should be doing to enhance that effort.

Ms. HOCHBERG. Well, it would certainly aid in the effort to the extent that the hole was created by nonreporting of profits generated from crime which, as you know, is taxable; so that clearly criminals who profit usually do not report their profits to the IRS. They usually launder that money. That is the only way that it is useful to them. One of the main goals of the Treasury Department, through this legislation and all of our programs, is to attack money laundering in every way we can and to stay ahead of the criminals that try evermore innovative ways to launder that money. To the extent we can detect laundered money and bring it back into the system, we can seize it, obviously, and trace whatever profits were generated and make them taxable.

Mr. KLEIN. Ms. Hochberg, while you are obtaining the information I asked for, I would be very pleased if we could have some followup conversations about the other aspect of problem that I re-

ferred to, that is, the underreporting or nonreporting of cash income that is not necessarily illicitly generated.

Ms. HOCHBERG. Certainly.

Mr. NOBLE. I would just like to add one point to my colleague's answer, and that is even if the money is not generated illegally or unlawfully, if I am engaging in a particular transaction knowing that a form is created, a form that is ultimately going to be sent to the Treasury Department or that the IRS will have access to, then I am going to report this or declare this at the end of this year. If there is a form or a paper trail, the theory is that one would be more inclined to report rather than be tempted not to report.

Mr. KLEIN. Thank you very much, both of you.

Thank you, Mr. Chairman.

Chairman NEAL. Thank you. Mr. Huffington.

Mr. HUFFINGTON. Just a brief comment. I wanted to reiterate that anything we can do to bring in tax revenues and reduce the deficit has to be good news for every law-abiding American, so I think it is great that we are discussing this particular issue. So thank you for being with us.

Mr. NOBLE. Thank you, sir.

Chairman NEAL. Mr. Vento.

Mr. VENTO. Thank you. Mr. Noble, the—as I understand this legislation, the section 8, the regulation of transmitting businesses, these are businesses that are not now registered with the Treasury; is that correct?

Mr. NOBLE. That is correct.

Mr. VENTO. And if they operate a payment-through system or some other system, very often they then fill the role of a financial institution—is this your view? They are fulfilling the role of a financial intermediary.

Mr. NOBLE. That is exactly it. With the tightening——

Mr. VENTO. But to carry this a step further. In section 2 of the bill, you don't have to read it, I will explain to you—I know you have, but I will explain that you are exempting a lot of routine transactions in terms of financial institutions, so in terms of registering these financial intermediaries, it isn't the intent to, in fact, have them report on a payment-through system all of the different data. Is it wherever there is a payment-through that is a large amount of—a large number; is that correct?

Mr. NOBLE. I am not——

Mr. VENTO. All of these are just the daily routine bills of payment-through, like check-cashing or transmission systems—for instance banks may hire a payment-through system.

Mr. NOBLE. Right. If I understand your point, if the goal of the bill——

Mr. VENTO. Is to reduce paperwork——

Mr. NOBLE. Exactly.

Mr. VENTO. You want to register them and have the ability, but there has to be, I think, some assurance, at least in this particular process that we are not going to then ask all of a sudden for a lot more details from them.

Mr. NOBLE. That is exactly right. At the Treasury Department, we will take a look at a lot of these businesses and make a deter-

mination as to whether or not we believe there is a significant threat that money launderers will use this particular avenue in order to launder money, and if we decide, no, their business is so routine and is generating high volumes of cash that the 3 million or 4 million or 6 million CTRs that are generated by businesses like this aren't likely to produce the kind of investigative leads or opportunities that it might make sense for the Treasury Department to signal to banks, look, you can exempt these businesses from the CTR reporting requirements.

Mr. VENTO. I mean, I guess it is a pretty broad category under section 8, if I am reading that correctly; is that right.

Mr. NOBLE. It is a very broad category and it allows the Department of the Treasury to eliminate the routine CTRs, which really aren't going to give us any clue as to whether money laundering is occurring. Further, it enables us to reduce the amount of burden on banks and the amount of burden on businesses and hopefully reduce the 9 million CTRs to some meaningful amount.

Mr. VENTO. I understand the intention. I don't question the intention.

Mr. NOBLE. It is broad.

Mr. VENTO. Pardon me.

Mr. NOBLE. It is broad and it gives discretion to the Department of Treasury.

Mr. VENTO. Do any of them register now with any agencies, the national government, in other capacity or not?

Mr. NOBLE. Currently, they are not registered under any Federal——

Mr. VENTO. Not all of them are registered. I expect some must be registered in some capacity.

Mr. NOBLE. In some capacity.

Mr. VENTO. Not necessarily with Treasury is what my point is.

Mr. NOBLE. Right; yes, sir.

Mr. VENTO. I think at the same time we are trying to streamline this process, it would be well to, if we identify categories where this registration already exists to add to that rather than adding another piece of paperwork or a lot more paperwork. I doubt it will be a simple form when everything is said and done here.

The other issue I had is the provision where you give the States the right to set certain criteria that are not in conflict with this. I guess it is in section 2.

You preserve those options where States have provisions that are not in conflict with this registration. They may be registered with the State.

Ms. Hochberg.

Mr. NOBLE. Section 7.

Ms. HOCHBERG. The concept is that the registration would be Federal. In other words, that the nonbank financial——

Mr. VENTO. Internationally, you mean.

Ms. HOCHBERG. Yes. One national comprehensive list so we would know who all the nonbank financial institutions are. We would leave the licensing and regulation function to the States, but encourage them to be uniform in the way they do that.

Mr. VENTO. Yes. No, I noted that. I think sometimes whether the State have or have not exercised that particular power it now may,

of course, be another matter. I don't know if it is not your intention to extend new powers to States to regulate financial intermediaries that they do not now regulate; is that correct?

Ms. HOCHBERG. We wouldn't be giving new powers to the States. We would be encouraging the States themselves to adopt uniform licensing and regulation.

Mr. VENTO. This is not a small matter. We are fighting in Congress over banking and interstate branching and other issues; all of which raise concerns about preserving certain State roles. But I think we don't want to move down the road in one direction. I know it is not your intention to do that, but I am wondering about the impact of it. The single designee, who are you going to designate as single designee for suspect transactions?

Ms. HOCHBERG. That is a decision that the task force is looking at right now as we speak and we expect to get back to the subcommittee——

Mr. VENTO. Nobody has won the prize yet?

Ms. HOCHBERG. Well, whoever is designated would have to share all of the information with all of the law enforcement bureaus that combat money laundering.

Mr. NOBLE. Not just Treasury-controlled bureaus. That is why we can't say here that it is going to be entity A or entity B. It is something we have got to work out within the executive branch, within the agencies involved.

Mr. VENTO. Do you think it will be someone on the Federal Reserve Board?

Mr. NOBLE. I would hope not.

Mr. VENTO. The casino issue, one of my other hats is to work on the Interior Committee—or the Natural Resources Committee we are—we work with the Native American Self-Determination Act, the Indian Self-Determination Act in gaming.

Have you discussed this particular change with the Solicitor's Office, or with the Department of Justice, in terms of what its impact is on it?

You know, the Department of Interior Secretary has the authority, he is designated the regulator under the Indian Gaming Regulatory Act, and I am just wondering in terms of the Indian Self-Determination Act whether or not you have explored whatever legal problems there might be with this activity.

Ms. HOCHBERG. It has been explored with the National Indian Gaming Commission, which, as I understand it, is part of that Department.

Mr. VENTO. Yes.

Ms. HOCHBERG. And there have been hearings recently on that subject.

Mr. VENTO. You believe there are no legal challenges under this, and you find that there is a reasonable policy path here that you are presenting to the subcommittee today regarding this? Mr. Noble. Ms. Hochberg.

Ms. HOCHBERG. With respect to whether or not the Justice Department finds any legal impediment to it, we are not obviously opining on, and we would be glad to get back to you with that.

The position we have taken is that there is no logical reason why the Indian gaming casinos wouldn't be just as attractive to money launderers as other——

Mr. VENTO. I am not talking logic, I am talking legal issues here.

Mr. NOBLE. Although both Ms. Hochberg and I are licensed to practice law, in our current capacity we would not be permitted to issue any sort of legal opinion at this point. So if we could have time to get back to you, to the executive branch, and to the Congress, we would like that.

Mr. VENTO. I would just like it for the benefit of this issue, because it will no doubt be of some point, if you are taking a reasonable action that will in fact cover almost every gaming casino and gambling casino—Indian, Native American—would obviously fall under this; is that correct?

Mr. NOBLE. That is correct.

Mr. VENTO. Has there been any indication of any special problems here?

Mr. NOBLE. Not that I am aware of.

Mr. VENTO. In other words, you are not representing it as an issue where there is a problem that has to be resolved; it is simply because there are large cash transactions that take place that need to be covered under this; is that correct?

Mr. NOBLE. I think what we are saying is that if we were not going to require some kind of reporting requirements, as we do for other casinos—whether it is Nevada or New Jersey, whether it is Nevada doing it in Nevada or New Jersey doing it through the Federal controls—that there would be a problem; and we are trying to avoid the problem before it occurs.

Mr. VENTO. OK. How about race tracks, State race tracks? Is it your intention to cover all of the gaming enterprises here, although it says only casinos in the descriptive materials I have?

Mr. NOBLE. I am not sure that I understand your question, sir.

Mr. VENTO. Well, it talks here about casinos or gambling casinos, licensed as a casino or gambling casino. Is it your intent to cover other types of gambling or gambling activities, such as race tracks, where large cash transactions may take place, although it only refers to casinos here?

Ms. HOCHBERG. The Office of Financial Enforcement has taken the position that race tracks are places of business that would be required to file the form 8300 that trades and businesses now file.

Mr. VENTO. That is what I was wondering, why they were absent. They are already covered in this?

Ms. HOCHBERG. Correct.

Mr. VENTO. Thank you, Mr. Chairman.

Chairman NEAL. Thank you.

As I understand it, GAO reported that they estimate as much as $50 billion a year in currency is smuggled outside the United States and then easily laundered in foreign countries, because countries often may not care one way or the other that big amounts of cash can be deposited in banks. Those banks then send it back—through their central bank system back to the United States, and it is not reported.

Now, this is a huge amount of money. Do you agree that that is probably correct?

Mr. NOBLE. Yes, we believe it is correct. We believe that because the cost of laundering money has gotten so high in the United States that, in fact, money is carried out of the United States in bulk, as you say, laundered through institutions outside the United States and then returned to the United States when the trail has gotten cold and long.

So we do agree.

Chairman NEAL. So what do you have in mind to disrupt this process?

Mr. NOBLE. Well, the bill has a provision which requires that there be a report generated when these bank drafts return to the United States; that is, prior to this bill I could bring a cashier's check or some other bank draft from a foreign bank into the United States, and I would not be required to declare it, unless it had been endorsed on the back.

This bill requires people to declare these documents much as they would be required to declare cash being brought back into the United States; and again, that would generate the form and create the paper trail and, we believe, discourage people from returning laundered money into the United States.

Chairman NEAL. Have you checked these provisions out with our major bank regulatory agencies?

Mr. NOBLE. Well, we are currently—as I said, the task force has representatives from the Treasury bank regulatory agencies so we are working with the regulatory agencies, and we are trying to get their input sooner rather than later, and we have done that.

Chairman NEAL. OK. That is a good idea, because I am no expert on it; and they will know whether it will work or not, I think, they are so familiar with these issues.

What do you find with other countries? Are most other countries which could be host to these kind of activities cooperative with us?

Who is, who isn't?

Mr. NOBLE. We currently are part of this Financial Action Task Force, which is a group comprised of 23-plus nations, which basically is trying to address the problem universally that we have been addressing in the United States; and there are a whole host of countries which are recognizing the problem that money laundering brings to their countries and are trying to address it.

But there are other countries—and I can't name all of them—which have not yet come on board. So one of the things that we are trying to do outside of the United States is, we are trying to encourage as many countries as possible to come up with reporting requirements which will create some kind of trail, which will help us target or will help us find money launderers.

But the point—and this is a point that this subcommittee has recognized time and time again—money launderers are very resilient. If you plug a hole in one area, then they will find a hole in another area, unless there is a uniform system. Then wherever the weaknesses are, the soft points are, where the money launderers will go—we are trying to address that both in the United States and internationally.

Ms. HOCHBERG. I should point out that representatives of the Office of Financial Law Enforcement and of FinCEN have been invited to go to some of the countries that have become money laun-

dering havens or that present the threat to become them to teach and explain to the government and financial officials in those countries how to identify risks of money laundering. So we do conduct outreach in that way.

Chairman NEAL. How effective is all of this? How about the country Colombia, for example. Is the Colombian Government cooperative and do we have an effective antimoney laundering effort there?

Mr. NOBLE. Well, I would prefer, with all due respect, not to answer that question, because I would be just speculating.

Chairman NEAL. Please don't answer if you don't know the answer.

Mr. NOBLE. But I can tell you that there are a number of countries out there which do not take money laundering and the fight of money laundering very seriously; and I would rather not list those countries.

Chairman NEAL. That is all right. And I do think, though, it just sounds to me like here is probably an area where our efforts, at least in this bill, may not have the kind of reach that we might like. It may be something to give a little more thought to. We will do that here, too.

I have noticed—I can't think of any great examples now, but sometimes we develop policies that are great at catching the little guy, but don't do much about catching the real big ones. I just sense that there is a possibility here for sort of major loopholes.

I want to point out that we have two more panels this afternoon. So Mr. Bachus, go ahead.

Mr. BACHUS OF ALABAMA. These questions don't have anything to do with Colombia.

One is, in your testimony you said there were provisions in this bill which address, but did not rectify, the problem of identifying and reporting these transactions to law enforcement; and you said that—I think your proposal, or Treasury's proposal, is to develop a single form which would be filed with the Treasury Department.

Mr. NOBLE. What we are trying to do, sir, is right now banks are required to file multiple copies of criminal referral forms to multiple Federal agencies; and we know that we also have the CTR, the Currency Transaction Reports, that have a suspicious transaction box and reporting obligation. We are just trying to really get together within the executive branch here and make the reporting more streamlined, rather than having, you know, multiple forms go to multiple agencies simultaneously.

But we don't have an answer yet, we don't have a proposal yet. But that is something that the task force is working toward.

Mr. BACHUS OF ALABAMA. Is that in addition to a CTR form, or would that be as a substitute to a CTR form?

Mr. NOBLE. One of the things we are trying to do is sort of throw everything open. We don't want to be locked in to say that there have to be two forms, one is a suspicious transaction form and one a CTR form and a criminal referral form. What we want to do is help the banks help us identify the problem in the most efficient and cost-effective way, and that really requires us to look at everything anew, so—you know, everything is really open, everything is fair game.

And we also want to be mindful of the fact that we can't just periodically say to banks and other institutions, well, we are now going to generate a new form, and even though you know how to use the old form and you have integrated that perfectly, now we have a new form.

So we are trying to do a lot of balancing and a lot of analysis anew with an open mind.

Mr. BACHUS OF ALABAMA. Is this the Money Laundering Review Task Force that is reviewing this?

Mr. NOBLE. Yes, it is.

Mr. BACHUS OF ALABAMA. I am going to submit a question to you about when their reports, you think, will be available, because they are going to affect this legislation. We don't want to change—I don't know that we want to change the law and then come back 3 months later because you—I know you have proposed in your testimony maybe a substitute for the CTR or——

Mr. NOBLE. With the exception of eliminating the Nevada casino exemption, by and large, this bill gives us a lot of discretion to examine various areas and report back to the subcommittee. There are a lot of powers that this bill, or a lot of obligations that this bill imposes on the Department of the Treasury or on banks, if you will, that the Department of Treasury could, on its own, do by regulation.

So the bill gives us discretion in some areas, and in other areas it doesn't give us discretion.

But, hopefully, as we come up with our proposed solutions or attempts at solving the problems that Congressman Vento and others have highlighted, we will be able to integrate the two. That is the goal.

Mr. BACHUS OF ALABAMA. All right.

My second question is that there is a provision in this bill which says that banks which are already complying with the exemption provisions for filing CTRs should not be penalized; and I think you questioned that and said that Treasury opposes this provision to limit bank liability. Is that right?

Mr. NOBLE. I might have misspoken. That is clearly not what our position is. Our position is that the Treasury Department ought to help lift the burden off of banks by generating lists of exempted organizations—or entities, if you will—which the banks would not be required to file CTRs on. If they don't file CTRs and, for some reason, we learn at some point that the particular company or entity was involved in money laundering, we can't then go to the bank and penalize the panel for having not filed a CTR.

On the other hand, if the bank misfiles, improperly doesn't file a CTR, or—and I don't want to suggest this is what happened—engage in on a supporting basis money laundering, then there would be no safe harbor provision.

Mr. BACHUS OF ALABAMA. Is that the practical problems—you talked about being presented with some practical problems.

Mr. NOBLE. The practical problems were what I highlighted earlier, and that is, currently banks have a very complicated CTR form to fill out. Nonetheless, they spend a lot of years developing programs and ways to deal with the CTR form. It may be for many banks more cost effective for them to generate a CTR form on a

business that they could otherwise exempt, because then they don't risk the possibility—after civil penalty, they don't risk the possibility of some kind of punishment for a mistake that might occur in the exemption process.

The consequence of that, as they become more efficient in dealing with the problem of CTRs, is we now have 9 million CTRs that come in every year. So what we want to do is give the banks an incentive, and in fact proscribe or prohibit the filing of CTR for certain categories of businesses, for example, the U.S. Post Office or some other State or Federal agency, in order to reduce the number of CTRs filed.

Mr. BACHUS OF ALABAMA. All right.

I have two more questions I am going to submit in writing if I could; and I want to commend you, Mr. Noble, on your answers to these and my previous questions.

Mr. NOBLE. Thank you, sir.

Chairman NEAL. Mr. Vento.

Mr. VENTO. Mr. Chairman, just a sequence in the way Mr. Noble—Mr. Secretary, that you would, in fact, proceed with this, obviously the exemption between the Post Office and bank-to-bank, and you obviously have some financial institutions that are now exempt. And I think, you know, obviously the intention is not through this legislation to go through a whole review process again for those exemptions; is that correct?

Mr. NOBLE. Right.

Mr. VENTO. The issue is, of course, the sequence in which this would function because sometimes the services offered by banks may also be the same services offered by financial intermediaries who are not covered by the CTR requirements. So the sequence I would hope would be that before you extend the requirement, that you would determine whether or not they will be exempt. Thus there would basically not be a period of time where 6 months after the act, they are required to start reporting, and then apply for an exemption, which they might get 2 years out, while they are offering or trying to offer the same services that banks are, so that you make a determination before you start collecting all of the information whether or not they are exempt.

Mr. NOBLE. We are going to try to use the most effective sequence. I am not certain if it is the same sequence that you have just articulated.

Mr. VENTO. That is what I am asking. I am just asking that question, basically. You don't know the answer to the question right now. Maybe it is confusing to you. But the idea is that since you are going to require a registration for a financial intermediary, which we talked about under section 8 of the bill, and then the determination would be made whether or not they will be exempt, I expect from reporting.

Mr. NOBLE. I think I am—I apologize——

Mr. VENTO. I was linking the registration and the reporting together, and maybe I confused you on that basis.

Mr. NOBLE. No, I think I am confusing you. Let me just try again.

The exemption concept deals with banks that are currently generating CTRs for a whole category of businesses and companies

that we believe ought to be exempted, that we believe are not really a threat with regard to money laundering. What Treasury hopes to do and expects to do is to create a list of exempted clients, if you will, of the banks.

Mr. VENTO. Yes, that is right.

Mr. NOBLE. Exempted clients of the bank where the bank would not be required to file a CTR form for any cash transactions of that client, where they are currently filing CTRs. So that is the exemption process that I was trying to articulate, and I may not have done it correctly.

Mr. VENTO. You want to extend the CTR requirement to any of the other financial intermediaries which will be registered under section 8?

Ms. HOCHBERG. Nonbank financial institutions are already required to file if they receive cash transactions exceeding $10,000. There is no registration system now, but they are required by law to file CTRs if their transactions exceed the $10,000 amount.

Mr. VENTO. Will they be given any consideration for exemption from the act?

Ms. HOCHBERG. Well, I certainly think that that is a good issue for the task force to determine, whether the same concepts that go into determining which criteria of accounts banks should be able to have blanket exemptions for, because we know they present no money laundering threat.

Whether those same concepts can be applied to certain nonbank financial institutions is a good one.

Mr. VENTO. Well, sometimes—excuse me. Sometimes they are offering the same services, basically.

Ms. HOCHBERG. Yes, they are. I understand the question, and obviously if they have accounts that are similar to the kinds that we are granting exemptions for under banks, we should look at it for nonbanks as well, if there are similar types of circumstances. I think that is a worthy thing for us to have a look at.

Mr. VENTO. Yes. I think the concern was whether this would be done on a balanced basis so that you wouldn't have a long hiatus of years while you are determining that, as opposed to—because they obviously are offering the same services and they are competing; and, of course, this is an issue I expect with them.

So if it could be logical to exempt a financial institution from it, it perhaps would be logical to exempt a financial intermediary.

Ms. HOCHBERG. Right. And obviously the financial institutions are not exempted across the board. Certain types of accounts are exempted, and what you are suggesting is, we look at also exempting certain types of transactions that might occur in nonbank financial institutions that are the same; and that is a question we should look at.

Mr. VENTO. Thank you.

Thank you, Mr. Chairman.

Chairman NEAL. Yes, sir. Thank you.

Well, Mr. Secretary, thank you, sir; Ms. Hochberg, thank you very much, and we will stay in touch.

Chairman NEAL. Our next panelist is Mr. Dennis Crawford, Chief, Criminal Investigations Division, Los Angeles District, Internal Revenue Service.

Mr. Crawford, I want to welcome you to our hearing today; and thank you for being with us. We will put your entire statement in the record and ask that you summarize so we will have a little chance for questions and answers. We understand you have an interesting story to tell us, and we look forward to hearing from you.

STATEMENT OF DENNIS E. CRAWFORD, CHIEF, CRIMINAL INVESTIGATIONS DIVISION, LOS ANGELES DISTRICT, INTERNAL REVENUE SERVICE

Mr. CRAWFORD. Thank you. I thank you and the subcommittee for this opportunity to appear and testify here today concerning aspects of the proposed Antimoney Laundering Act of 1993.

My testimony will focus particularly on issues raised in section 7 of your proposed legislation. More specifically, I hope to illustrate how nonbank financial institutions can be utilized to launder money.

From the beginning, the Internal Revenue Service has expended significant resources to contribute its unique financial investigative expertise to law enforcement's collective efforts against proliferation of drugs and related criminal activity and the corrupting effects its illegal profits have had in this country. From the field perspective, we welcome all initiatives and assistance from Congress which would make us more efficient and successful in our endeavors.

Anything I can say here in attempting to describe the scope of the money laundering problem in Los Angeles would still be understated. Our day-to-day experience tells us that when law enforcement begins to gain the upper hand in a given area, the criminal element finds new and different ways to circumvent those successes. One of those ways, continuing to grow in popularity since established financial institutions began tightening their antimoney laundering controls is the use of nonbank financial institutions. These nonbank financial institutions include check-cashing businesses, currency exchange houses, electronic money transmitters, as well as other established local businesses, such as liquor stores and travel agencies acting as check cashers and money transmitters. All types of these nonbank financial institutions continue to flourish in Los Angeles as well as elsewhere.

In the aggregate, nonbank financial institutions offer a complete array of banking services comparable to those previously available only from full-service banks. Although many of these are legitimate businesses providing financial services to people who may have limited access to banking services, many of them have been utilized by criminal organizations for illicit purposes.

Government regulation, oversight, physical inspection, and currency reporting requirements for nonbank financial institutions varies greatly by State and local jurisdiction. For the most part, meaningful monitoring and enforcement is inconsistent and sometimes nonexistent. In California, for instance, check-cashing businesses were once licensed by the State Department of Corporations. Licensing is no longer required and, thus, there are no compliance audits.

Regulation and oversight of these businesses in many States might be considered passive at best. This results from having nei-

ther the legislation nor regulatory responsibility to require such oversight, and from not having the resources to conduct such programs even if they were on the books. The magnitude of the problem is underscored within the context of the huge volume of such businesses throughout our State which would be subject to such oversight.

The IRS examination function plays a role in the oversight of these nonbank financial institutions pursuant to its responsibilities under the Bank Secrecy Act. IRS examination's oversight role is to ensure compliance by the nonbank financial institutions with the currency reporting requirements of the Bank Secrecy Act. This is done by identifying nonbank financial institutions, educating the nonbank financial institutions about the reporting requirements, and conducting compliance checks to assess and enforce compliance with the Bank Secrecy Act.

Mr. Chairman, my division in Los Angeles has been relatively successful through the years investigating and criminally prosecuting money laundering organizations which use nonbank financial institutions, in whole or in part, in their illegal activities. I would like to take a moment to give you a brief overview of one case which typifies the ease by which check-cashing facilities can be used for large money laundering operations.

These investigations are very resource intensive and time consuming. Criminal enforcement cannot solve this growing problem without comprehensive administrative programs of regulation and oversight at both the Federal and State levels, to augment our efforts.

The investigation that I will describe began from information developed during a nationwide multiagency organized crime drug enforcement task force probe, code-named "Operation Pisces." This particular investigation involved the Internal Revenue Service, the Drug Enforcement Administration, and several State and local agencies in which undercover agents posed as money launderers to identify and investigate narcotics traffickers, money launderers, and couriers. It is just one of several investigations derived from leads out of Operation Pisces. This case was summarized in a 1990 issue of a national news magazine.

The investigation involved the laundering of huge profits of a drug distribution empire from which it is estimated that the principals were moving one ton of cocaine per week, generating profits of approximately $4 million per month. The criminal organization involved in the case appeared to be the first direct connection between Colombia's Cali Cartel and street gangs in the United States. It matched a young 29-year-old, linked directly to Colombian narcotics traffickers, with a 25-year-old Los Angeles man who had a natural affinity and talent for business.

Once under way, they quickly accumulated the wealthy trappings of success, varying from major real estate and luxury car purchases to high rolling in Las Vegas and the financial backing of a Broadway play. International deals were negotiated in foreign cities in Denmark and Italy. From the outset, one of the main tools of choice for this organization to launder proceeds from the enormous sales of crack cocaine was check-cashing businesses. It had already established three such businesses and was in the process

of purchasing others at the time law enforcement moved in and shut them down. During the investigation, $12 million in U.S. currency and 500 kilograms of cocaine were seized, along with other assets.

Court-authorized monitoring of telephone conversations revealed detailed instructions being relayed among coconspirators on how the check-cashing businesses were to be set up and operated. As a reflection of the booming business, the person responsible for the check-cashing operations was overheard on the phone complaining to his boss about running around 24 hours a day and being worked too hard.

Evidence obtained confirmed the belief that this organization used these check-cashing businesses to achieve a number of well-defined goals. One such goal was to provide a viable cover story in case any of the participants were caught with large amounts of cash. This actually occurred when one of the money runners was stopped by police, who discovered thousands of dollars in his possession. He tried to explain the money away by stating that it belonged to one of the organizations that controlled check-cashing businesses for which he ostensibly worked.

Another goal, the most obvious one, is that the drug-controlled check-cashing businesses had plenty of dirty cash to run the check-cashing service. This provided a clean and direct way to exchange dirty cash for third-party checks while avoiding withdrawing large amounts of cash from banks. It even generated small profits from legitimate check cashing as well. The check-cashing businesses also gave these criminals a safe place to count and store their cash, and it permitted them an entre to banks where they could deal in large amounts of money without raising suspicion.

After the extensive joint investigation and prosecutions were concluded, the two young men who headed this organization were each convicted and sentenced to prison terms of life-plus-24-years, while five codefendants received prison terms ranging from 11 to 20 years. This significant investigation and prosecution is but one example of many in the Los Angeles area, as well as throughout the country, in which nonbank financial institutions have been utilized for the laundering of money.

Although this is an example of an instance where the operators of the check-cashing businesses were involved, countless others may be utilized unwittingly by professional money launderers.

In conclusion, I would like to reiterate the need for additional State regulation and oversight of the nonbank financial institutions such as proposed in H.R. 3235. If State licensing and regulation, including adequate background checks of proposed nonbank financial institution operators, were in effect at the time this criminal organization was active, it would have significantly impeded the organization's ability to openly operate the check-cashing businesses.

Mr. Chairman, this concludes my prepared statement. I would be pleased to answer any questions that you may have.

[The prepared statement of Mr. Crawford can be found in the appendix.]

Chairman NEAL. We have a vote ongoing. We have about 5 minutes to get over there and vote, so we will recess here for 10 min-

utes and be right back and pick up with the questioning at that time. So thank you, and we will be back in about 10 minutes.

[Recess.]

Chairman NEAL. I will call the subcommittee back to order here. I am sorry for that interruption, but these things happen.

Mr. Crawford, thank you, sir, for your testimony. The bill suggests that there will be registration and then State enforcement, and the idea would be to encourage States to come up with uniform standards and laws. Does that sound adequate to you?

Mr. CRAWFORD. It sounds reasonable to me and necessary; and I think in the instance of the case I just articulated, if those people would have had to go through some sort of a licensing process and provide information and be subject to some sort of background investigation by the State, they very well may not have purchased check-cashing businesses and had to do something else that may have been easier to detect.

Chairman NEAL. Frankly, the situation like you described doesn't sound it would have been very hard to detect. If you had a situation where only checks were going into the bank from a check-cashing operation and no cash was going out of the bank to pay off the checks, it would seem to me that someone might be a little suspicious.

Mr. CRAWFORD. The money not only went into the banks and then overseas, but it also—when the third-party checks were deposited into the bank, that is the normal business of a check-cashing business.

Chairman NEAL. I know, but don't most check cashers have to have cash to pay the owners of the checks?

Mr. CRAWFORD. Yes, they do, and that would have been one way to identify them; but we have no system set up to——

Chairman NEAL. Well, that is the second question then. Might that not point to a weakness in the bill that we don't have any such procedure? I don't know how common this is, but I mean, it sounds like this could be repeated——

Mr. CRAWFORD. Yes.

Chairman NEAL. Fairly easily.

Mr. CRAWFORD. And in fact, probably is. It is a matter of trying to wade through—as part of your bill does address, wade through the million—9 million, I guess—CTRs that are filed and try to determine which ones of those need further pursuit and which ones don't.

Chairman NEAL. In this case it wouldn't even be a filing, it wouldn't be a filing that would alert one to the problem, because only the checks were being deposited, no cash was being deposited.

Mr. CRAWFORD. That is correct.

Chairman NEAL. So what we envision by this bill and what current law does wouldn't deal with this problem at all; it just wouldn't touch it.

Mr. CRAWFORD. Well, something else. By section 7, as I understand it, of your proposed bill, what that would do is potentially keep people such as these out of the check-cashing business.

Chairman NEAL. How?

Mr. CRAWFORD. By requiring—by working with the States to have them go through some sort of registration.

Chairman NEAL. Why couldn't they just register as a check-cashing business and then go ahead and do what they were doing? I mean, just the registration wouldn't alert anyone to a problem, I don't think; would it?

Mr. CRAWFORD. I don't know that that would, and I am not sure what the task force is working on now or what proposals they might make to work with the States in order to have a background check as part of that registration performed by the State——

Chairman NEAL. I see.

Mr. CRAWFORD. Before they grant the registration.

Chairman NEAL. But they could probably find someone to—or if they bought one, they could sort of encourage the same management and owner to run.

Anyway, I take your point. This is a unique situation, though, what the bill envisions just wouldn't catch it; something else would have to catch it. Someone would have to be alert to the fact that there is always money coming in and none going out and that that didn't quite add up.

Mr. CRAWFORD. I think that would be part of it and part of identifying the players through registration that we could use would perhaps be useful, and then you could see who the registered people are that are doing check-cashing businesses, and why don't we have any CTRs being filed?

Chairman NEAL. Now, how thorough is the IRS in looking into these kinds of operations around the country?

Mr. CRAWFORD. Once it is identified as potentially a criminal operation, then the Criminal Investigation Division is involved, and we pursue those vigorously. The difficulty is with the vast number of nonbank financial institutions and the small number of people in our Examination Division to deal with this.

Chairman NEAL. That is what I was trying to get at. You don't even try to take a look at anywhere near all of these; it is just on a selective basis where you might do a criminal investigation.

Mr. CRAWFORD. Absolutely. And many times, as part of a joint operation with another law enforcement agency, where we have either informant information or some other information that they may be involved in laundering proceeds from illegal activities, whether it be narcotics, insurance fraud, or something else.

Chairman NEAL. Well, any other thoughts on our bill? Are there any ways you see, from your experience, that it could be strengthened; or do you see any flaws in it?

Mr. CRAWFORD. Mr. Chairman, none that I can comment on now or, in fact, know based on my knowledge of your bill. I think that the group that is together as part of the task force looking into this represent very qualified people; and I am sure that they will come up with the appropriate answers.

Chairman NEAL. All right. Well, I certainly appreciate your help on this. I don't have any further questions at this time. I thank you very much for your help.

Excuse me, Mr. Bachus wanted to ask some questions.

Mr. BACHUS OF ALABAMA. Mr. Crawford, first of all, would you comment on Assistant Secretary Noble's proposal to give IRS agents a summonsing authority in suspicious transaction cases?

Mr. CRAWFORD. I think that would be very useful. Right now it is a problem, and I think it would be something that would be a benefit to the Internal Revenue Service and to law enforcement.

Mr. BACHUS OF ALABAMA. All right. The Treasury Department in its testimony suggests that financial institutions report suspicious activity directly to the IRS office in lieu of filing a form with the Treasury Department. Can you describe what the local IRS office does when they receive a call from a financial institution reporting a suspicious transaction?

Mr. CRAWFORD. I can tell you the way that it is done in Los Angeles, a financial group of special agents has the responsibility to respond to telephone calls from banking institutions on suspicious transactions; if they are not in at the time, they return the call immediately and determine, along with the bank official, as to what the appropriate action might be.

The bank official then does file the suspicious CTR information. So that many times it is directly with my agent.

Mr. BACHUS OF ALABAMA. OK. You testified here today, I think, and also the ABA has said that nonbank financial institutions are poorly monitored for compliance. How would you suggest that we more closely monitor them? Would you have them register annually with the IRS?

Mr. CRAWFORD. I wouldn't be able to comment on who they should register with right now. It appears like the best method, as proposed by the bill, is to work out something with the States so that somehow they could be better regulated and registered, perhaps with background information provided before they go into the check-cashing business. I think that would be very useful.

Mr. BACHUS OF ALABAMA. You mentioned travel agencies, in addition, and liquor stores, I think. Are there any other institutions—I mean, any type of businesses other than check-cashing businesses that you would——

Mr. CRAWFORD. Those were two which I am familiar with in Los Angeles that are used; and what happens many times is they are not—it is not their travel agency or their liquor store business, but they are also serving actually as a check-cashing business where a large majority of their financial profits may come from providing a service of cashing checks, and leading off into other banking or financial transactions.

And whatever business, legitimate business, would put themselves in that situation, once they start to go into the business of cashing checks, then I think they would be of interest to us.

Mr. BACHUS OF ALABAMA. But that is the main business activity that you see as outside the reporting process now that needs to be regulated?

Mr. CRAWFORD. Well, I think the actual check-cashing businesses that are set up to be check-cashing businesses, yes; and then we have the other businesses that have a sideline of cashing checks.

Mr. BACHUS OF ALABAMA. All right. But that is the major activity that you see, where we are having money laundering in large amounts, is through the check-cashing business?

Mr. CRAWFORD. I would hesitate to say that that would be the major one. I would tend to say that this is where much of it is going through. Another method is where you have merely the phys-

ical transport of currency out of the country, and I do not know—I would believe that it may even be more, as far as money going out of the country, either through bulk transport through our ports or physically carrying it across the borders to get it out of the country and come back in.

Mr. BACHUS OF ALABAMA. All right. Thank you.

Chairman NEAL. Thank you, sir. Back to this instance that you told—how was that brought to your attention? Did a bank finally say to you, this is strange that there is so much money coming in and none going out?

Mr. CRAWFORD. No. One of the other ways, as with many large drug organizations, the cash is absolutely a burden for them. It is more voluminous than the drug itself, and they have to have, many times, several different ways; and before they latched onto this check-cashing business idea—and, again, that was one of the ways they did it—they came to undercover agents who had put themselves out as being able to handle cash and get it into the banking system and asked for the assistance of the undercover agents to handle some of their narcotics proceeds.

And I believe, at the same time, some of the State and local agencies were looking at the individual that was involved in the crack cocaine and noticing who he was involved with; and they came together at that point and kind of put it together from the financial aspects of it and from the drug aspects of it. And so the best way to go after these people is with a joint operation.

But it initially came to us on the financial aspects from approaching an undercover agent who had put himself in the business of handling narcotics proceeds.

Chairman NEAL. Well, again, how long did this go on, do you think, before it was discovered?

Mr. CRAWFORD. The individual that was involved in the narcotics side of it, from Colombia, he had been involved in narcotics trafficking since approximately 1983.

Chairman NEAL. No, I was really talking about the check cashing.

Mr. .CRAWFORD. That started out in 1987, and they were just kicking into it pretty hard when we took it down in 1988.

Chairman NEAL. So just a year, really.

Mr. CRAWFORD. Yes. During the period December 1987 to March 1988, and this is from telephone intercepts and information we could identify, they distributed 2,500 kilograms of cocaine or about 5,500 pounds and received about $22 million; some went back to Colombia to pay for cost of goods sold. Some went over to Denmark and then came back into the country.

Chairman NEAL. How much through a check-cashing operation?

Mr. CRAWFORD. I would estimate, and this is from my memory, I think probably about $9 or $10 million.

Chairman NEAL. I still think I am missing something. I cannot understand why someone wouldn't have noticed that this would be a strange situation. I mean, just the nature of the business. It was a check-cashing business. To cash a check, you have got to take a check in and you have got to pay out in cash; and the way this thing was structured, there were checks coming in, but no cash going out.

Mr. CRAWFORD. Perhaps if it would have gone on longer, perhaps a bank official would have stumbled onto it in one of their audits or noticed something suspicious or unusual in that. But as far as from a law enforcement perspective, that is one of hundreds of thousands of operations ongoing out there.

Chairman NEAL. No, I mean the bank itself, really. Because I understand how the law enforcement, you guys are spread very thin, but it just seems to me that someone at the bank would have thought this was strange.

Mr. CRAWFORD. They maybe could have, or potentially they don't know how big the business is, or if they have operations in other cities.

Chairman NEAL. Such as cash from another source, I guess.

Mr. CRAWFORD. Money from another source—and that is done many times—businesses use different banks for different purposes and all very legitimately.

Chairman NEAL. Just one more question. It would seem to me that it wouldn't be too hard to use legitimate businesses to launder money. For instance, a sizable drug operation could buy convenience stores or grocery stores or some other kind of business that does a large amount of cash business, and just run cash through it.

I guess this is, in fact, a way that money is laundered, typically.

Mr. CRAWFORD. You are correct. And we get very suspicious when we see, say, a travel agency or some other legitimate business with all this money running through their accounts, and they look like the Maytag repairman as far as their daily business, nobody going in and out, but hundreds of thousands of dollars going through their account.

Chairman NEAL. Right. Is that something you monitor normally? For example, let's take a grocery store. How would it come to your attention that the amounts of money coming through that grocery store are not legitimate? How would you know, unless you stake it out and see that there isn't much traffic there.

Mr. CRAWFORD. Realistically, the way that it would usually come to us is from informant information, people who are involved in the operation, or from agencies that are following the narcotics side of it. You don't know, many times, on surveillance if you are following narcotics or you are following money. It is bundled and carried in large containers, suitcases, and that type of thing.

So many times, if you see the people that you are interested in going in and out of the grocery store or something like that, they would then become suspect. On the other side of the coin, it could happen where somebody muscles into a legitimate business, and then suddenly their currency transactions expand dramatically. It goes back to part of what the bill tries to, I think, ensure, that people know their customers—in other words, the banks know their customers or the businesses know their customers, the people bringing the money in to them. But it is very difficult.

Chairman NEAL. Well, I sure thank you, sir, very much; and if you have any further thoughts, we welcome them.

Any other questions? We have another panel.

Mr. MCCOLLUM. I don't want to belabor that, because I haven't been here for a lot of this, and I apologize. But I just was curious,

Mr. Crawford, under the laws in California where you operate, is there any effort that you have seen to get improvements in State laws for nonbank financial institutions in terms of reporting requirements or the kind of regulatory relief that, since the congressional resolution we proposed, would like to see done uniformly?

Mr. CRAWFORD. I think there are many people in the State of California that would like to see that happen, and there are some efforts under way. I do not know what the current standing of those efforts is.

Mr. MCCOLLUM. All right. Do you have any thoughts yourself about what should be included in such a kind of law that would be helpful to you?

Mr. CRAWFORD. I think that it is a matter of trying to keep the people out of this type of business and going back again to section 7; the States having some sort of system to see who gets into this business, some sort of registration including background checks; so at least we have some sort of a method at the beginning to keep people who are involved in laundering of drug money out of the check-cashing business.

Mr. MCCOLLUM. In other words, screening out convicted felons and other people, making sure they don't get into the business, is really mostly what you are concerned about?

Mr. CRAWFORD. That would be part of our concern, yes; and then once they are in, it would be knowing their customers, because a check-cashing business can be used unwittingly, and many times is used unwittingly, and I don't think legitimate businesess want that kind of money going through their system at all.

Mr. MCCOLLUM. Thank you.

Thank you, Mr. Chairman.

Chairman NEAL. Thank you, sir.

Again, Mr. Crawford, thank you very much.

Mr. BACHUS OF ALABAMA. Could I ask just one more question?

Would you say that the crux of the problem, as far as money laundering, is with the nonfinancial institutions, as far as your experience in Los Angeles?

Mr. CRAWFORD. I really would not want to comment on that. There are so many different ways to launder money; and I think that if you would compare it to the financial institutions and the nonbank financial institutions—I think we have done a pretty good job in the financial institutions of really trying to eradicate that.

It still goes on, but I think that we have pushed them over to other methods of laundering money; and I think the physical transportation out of the country is one, and I think the nonbank financial institutions is another major one.

Mr. BACHUS OF ALABAMA. All right. Thank you.

Chairman NEAL. Thank you, sir.

Thanks, Mr. Crawford.

Chairman NEAL. Our next panel is comprised of Ms. Sara Redding Wilson, senior corporate counsel, Signet Banking Corp., Richmond, Virginia, representing the American Bankers Association; Ms. Terry Jorde, president and chief executive officer, Towner County State Bank, Cando, North Dakota, and vice chairman, Bank Operations Committee, Independent Bankers Association of America; Ms. Susan Woolf, vice president, branch services, Great

Western Bank, FSB, Northridge, California, on behalf of the Savings and Community Bankers of America; Mr. Jeffrey Silverman, president and chief executive officer, M.S. Management, Inc., Northbrook, Illinois, and vice president, National Check Cashers Association, Inc.; and Ms. Janice Mileo, vice president and corporate counsel, Travelers Express Co., Inc., St. Louis Park, Minnesota.

I would like to welcome all of you this morning—this afternoon. Ms. Jorde, I understand that you have a little time problem and you would like to catch a plane. So if it is all right with everyone else, we will let you go first. Is that right?

Ms. JORDE. I have a 5:15 o'clock plane.

Chairman NEAL. We will hear from you first. And we will put the entire statements of all of you in the record and we understand that you all have been asked to summarize your testimony and we will do that and have a little time for questions and answers.

So Ms. Jorde, we will hear from you first.

STATEMENT OF TERRY J. JORDE, PRESIDENT AND CHIEF EXECUTIVE OFFICER, TOWNER COUNTY STATE BANK, CANDO, ND; AND VICE CHAIRMAN, BANK OPERATIONS COMMITTEE, INDEPENDENT BANKERS ASSOCIATION OF AMERICA

Ms. JORDE. Thank you, Mr. Chairman. Members of the subcommittee, Mr. Chairman, my name is Terry Jorde and I am president and CEO of the Towner County State Bank in Cando, North Dakota. My bank is a $23 million agricultural bank in the north central part of the State and we have 12 full-time employees. I am also vice chairman of the IBAA's Bank Operations Committee.

Thank you for this opportunity to testify on the Antimoney Laundering Act of 1993, H.R. 3225. I will summarize my written statement and ask for permission to submit a revised version for the official record.

Chairman NEAL. Without objection so ordered.

Ms. JORDE. We commend Chairman Gonzalez' efforts and Chairman Neal's efforts to improve the balance between law enforcement needs and paperwork burdens on financial institutions. Compliance and paperwork burdens are the biggest problems facing community banks today and the biggest impediment to their ability to serve their communities.

We applaud the provisions of the bill that would provide the Treasury Secretary authority to exempt specific depositors from Currency Transaction Report requirements. The current exemption process is so burdensome that banks often find it simpler, and less risky, to routinely file CTRs even on legitimate deposits. It is important that the new procedures reduce this burden so that the ultimate goal of reducing the number of CTRs can be achieved.

H.R. 3235 also provides a safe harbor from the threat of penalties for a bank which has received an exemption unless the bank has supplied the Treasury with inaccurate or incomplete information. We recommend that the legislation be amended so that a bank would lose its safe harbor only if it "knowingly and willfully" files inaccurate or incomplete information. Otherwise, a bank could lose its safe harbor even if it innocently applies for an exemption

based on inaccurate or incomplete information supplied by a depositor.

We welcome the provision that directs the Treasury Secretary to redesign the CTR itself to make it less burdensome and more useful. We have made similar recommendations in the past.

We applaud the provisions establishing accountability for processing all referrals of suspicious activity. Although referrals are filed with the IRS, bankers have long complained that followup is rare and they seldom hear the results of their notifications.

The IBAA opposes the pilot program for bank examiners in identifying money laundering schemes. This would be very time consuming for examiners whose focus should remain on safety and soundness.

There is no need to give the Federal banking agencies additional powers to assess civil money penalties. FIRREA gave the agencies ample authority to assess civil money penalties.

We understand the bill directs the study of the use of cashier's checks in money laundering schemes. We encourage the study to analyze the benefits against the cost of increased reporting of cashier's checks. There is already an extensive paper trail for these instruments.

The following are additional ways to improve compliance with the Bank Secrecy Act. It makes a great deal of sense to us to increase the $10,000 CTR reporting level and $3,000 log requirement to take account of inflation.

The 1992 legislation directed the Treasury, in consultation with the Federal Reserve Board, to implement requirements for international wire transfer reporting requirements by January 1, 1994. It also directs the Treasury and the Board to establish domestic wire transfer recordkeeping if such records have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.

We continue to oppose recordkeeping requirements for domestic transfers. We believe there is insufficient evidence to indicate such recordkeeping will improve law enforcement's ability to detect or deter illicit activities. We urge the Congress to direct the Treasury and the Board to study this matter further before implementing new reporting requirements.

Even if the Treasury and the Congress adopt all of the recommendations we make, new issues will continue to arise. The BSA Advisory Group established under the 1992 legislation is just forming. We strongly recommend that Congress and the Treasury pay close attention to the suggestions and recommendations that come from this group.

Chairman Gonzalez' bill, H.R. 3235, is a good start toward reducing the burden of compliance under the BSA for banks and toward uniform application of the law toward nonbank financial services entities. However, more needs to be done now and on an ongoing basis. We are willing to work with Chairman Gonzalez and others to solve these tough problems. Again, we thank you for listening to our views on this matter relating to the Bank Secrecy Act.

Finally, Mr. Chairman, I would like to take a moment to comment on a proposal made yesterday regarding the retail sales of nondeposit investment products by insured depository institutions.

Chairman Gonzalez stated that the bill is designed to protect the vulnerable customer from unsafe and unsound tactics used in previous scandals.

Tonight I will return home to North Dakota and will not be a part of the debate on this bill, but I urge the members of this subcommittee to not treat all banks as if they were the same as Lincoln Savings and Loan. It is simply not true. Our bank, through an affiliate, has provided mutual fund services to citizens of our community since 1987. We saw a need to provide this service in a safe environment that was not being provided by the 1–800 number brokerage warehouses in New York. Our emphasis, and that of most community banks in this industry, is to provide a true service to our customers in all areas of financial management. We believe that we have, in fact, limited the risk to our customers by providing them with a licensed individual that they can talk to face-to-face any time they have a question and who can be held accountable because he works in our bank, lives in our community, goes to our church, and served on the chamber of commerce.

I understand that past abuses in the system have caused tremendous concern by Congress in matters relating to these financial services, but I urge you to punish the abusers, not the thousands of community banks who are truly doing what is in the best interests of our customers.

Once again, I thank you very much for the opportunity to comment on these issues.

[The prepared statement of Ms. Jorde can be found in the appendix.]

Chairman NEAL. Well, thank you very much. And we will understand, whenever you have to leave.

Ms. JORDE. OK.

Chairman NEAL. At this time of day, it can be crowded so you would better leave yourself enough time.

Ms. JORDE. 5:15 o'clock. Time to leave? OK. Were there any questions? I would be happy to answer any questions.

Chairman NEAL. I don't really have any questions. Do you, Mr. McCollum?

Mr. MCCOLLUM. No, but I want to thank you for coming a long way to do this. I think the point is that the Independent Bankers have a lot of good things to say about what happens if we overlooked the fact that small banks bear the brunt of this regulatory burden.

And this is part of the regulatory burden, even though it is a law enforcement part for another purpose that may be higher than some of the burdens you bear, it is still something that you need to come here and emphasize with us. It is a long way to come, but we appreciate your coming. Your testimony is very good.

Ms. JORDE. I thank you for the opportunity.

Chairman NEAL. Thank you, Mr. McCollum, for mentioning that. That is a long trip and we do appreciate it. I have a feeling there is probably not too much money laundering up in your part of the world anyway, is there?

Ms. JORDE. Not that I am aware of. We file maybe three or four CTRs a year. However, we have an annual training program for all

of our employees. Every teller has a filled-out CTR at their window so they are fully aware of how to do it. It isn't a frequent thing.

Mr. MCCOLLUM. Let me ask a question. In your bank, have you had anyone examine or look at your $3,000 recording, money between $3,000 and $10,000?

Ms. JORDE. The examiners make sure that we are doing it.

Mr. MCCOLLUM. But nobody in your knowledge in law enforcement has ever used it in your bank?

Ms. JORDE. Never.

Mr. MCCOLLUM. Thank you.

Chairman NEAL. I don't want to imply that there aren't problems everywhere. I know even in my part of North Carolina we have small communities where they have open air drug markets and some of the same problems that we have, here in Washington, DC, and New York. I thank you again and please feel free to leave.

Ms. JORDE. Thank you.

Chairman NEAL. Thank you again. And at this time let's just go down the line in the order we read people's names.

So, Ms. Wilson, we would like to hear from you at this time.

Ms. WILSON. Thank you, Mr. Chairman.

Chairman NEAL. Those mikes aren't great, so you need to speak right into them.

STATEMENT OF SARA REDDING WILSON, SENIOR CORPORATE COUNSEL, SIGNET BANKING CORP., RICHMOND, VA, REPRESENTING THE AMERICAN BANKERS ASSOCIATION; ACCOMPANIED BY RICHARD C. INSLEY, VICE PRESIDENT AND COMPLIANCE OFFICER, SIGNET BANK

Ms. WILSON. Can you hear me now? I am Sara Redding Wilson. I am with Signet Bank, Inc., Richmond, Virginia. I am here representing the American Bankers Association, and with me is Richard Insley.

Chairman NEAL. Welcome.

Ms. WILSON. For many years the banking industry has invited attention to the ever-increasing problem of information overload which has resulted from the Bank Secrecy Act. Last year banks filed more than 9 million Currency Transaction Reports.

In addition, we generate and retain massive quantities of records that would be needed to trace the transactions of our customers throughout the banking system. Signet's experience, and that of most members of the American Bankers Association, is that very little of this information is actually used by law and tax enforcement officers.

I support H.R. 3235. The bill will stop the flow of useless information into government data bases that are already bursting at the seams. What I thought would be helpful for you today is to take a look and hear about what Signet does today versus the impact that this law will have on its current filing.

In 1992, Signet filed 48,000 Currency Transaction Reports. Of that, 431 of those reports were marked suspicious, and keep in mind that of that 431, 300 were on one single customer. And when I came here in May, I told you that that was one where we had had no inquiry, no followup, no nothing on that particular case.

So we take a look at this and it cost Signet Bank approximately $500,000 a year to stay in compliance with the Bank Secrecy Act, and we are one of the banks that have moved in the past from having several hundred exemptions and today we only have 17. And why is that?

We are concerned about the risk we run with the penalties and also because it is easier, because we are on automated processing, just to go ahead and file it. So that is what we look like today.

So let's take a look at what we will look like under H.R. 3235. Currently, we file on tape something like this and we send this in. But we thought it would be helpful to visualize what it looked like on paper, so we dumped it on paper and this stack right here represents 2 weeks' worth of data taken from our tape and dumped here.

Now, I would like to go through this step-by-step because we think these exemptions and safe harbors are great. It would really help an institution like Signet, so if I could get Mr. Insley here to remove the first stack, we are going to distinguish between mandatory government filings and this is how many would be eliminated.

It would eliminate approximately 32 percent of the files that we file today. We applaud that effort. We are for streamlining.

After that, we have the government and we have major corporations. Now clearly, we are very interested in the list of major corporations that will be published in the *Federal Register*. We are very anxious and we have very clear communication and very detailed information on that. So that will be very helpful.

We are moving from the mandatory exemptions. We take a look at the discretionary exemptions and we have been somewhat hesitant to use this in the past. We move from 17 to this stack right here. And this stack talks about the filing that we do today on discretionary.

This is the one that we would be required to file with Treasury, the list that we recommend based on our experience, and what we know about our customer that we recommend they be exempt. The safe harbor provisions allow us to do that. We would never do it without that safe harbor provision.

Now, there were some concerns I have on just bottlenecks on getting this list approved and when we submit this. I like the negative response approach, that if we file and we don't hear from you, that our list has been approved, those kinds of things. But this shows you the dramatic decrease. This is 32 percent and 35 percent of the decrease that we file today, leaving us only with approximately 35 percent of our current filings that we file today.

That is improvement. That is streamlining. That is why we support this bill.

Now, let's talk about other opportunities that we have here, because even though this is the impact on Signet Bank, we still have other opportunities because it is not consistent among all three banks.

We have one—the determinant factor here is the customer mix. We have one bank where the impact will only be a reduction of 30 percent, where for the blended banks it is a reduction of 67 percent. So it depends on customer mix and where they are located and those kinds of things, but overall even the minimum impact of

one of our banks still is a 30-percent reduction which still meets the goal which we applaud in the bill.

We also recommend streamlining and other things but we wanted—we thought that we could bring most value to the table today of showing you the impact on the bill on the filing. This is just 2 weeks' worth.

Can you imagine what a year looks like? So we definitely applaud this effort and we appreciate the opportunity to be here today.

We are for streamlining, good communication, anything like that. We think this is a major step forward. We appreciate the opportunity to comment today.

[The prepared statement of Ms. Wilson can be found in the appendix.]

Chairman NEAL. Good. Thank you, ma'am, very much.

Now, Ms. Woolf. We would like to hear from you, please, ma'am.

STATEMENT OF SUSAN WOOLF, VICE PRESIDENT, BRANCH SERVICES, GREAT WESTERN BANK, FSB, NORTHRIDGE, CA, ON BEHALF OF THE SAVINGS AND COMMUNITY BANKERS OF AMERICA

Ms. WOOLF. Thank you, Mr. Chairman, members of the subcommittee.

I am Susan Woolf, vice president, branch services, Great Western Bank, a Federal savings bank, headquartered in Chatsworth, California. I am appearing today on behalf of the Savings and Community Bankers of America, further referred to as SCBA, our national trade association representing more than 2,000 community-based lending institutions.

I am responsible for Great Western's compliance with the Bank Secrecy Act. Great Western is a $38 billion institution with 388 branches in two States: California and Florida.

SCBA member institutions are committed to assisting in the battle against violations of our Nation's criminal laws and in particular the use of insured depository institutions to launder the profits of illegal activities. Toward this end, SCBA has actively been working with the Federal Bureau of Investigation and the Treasury Department's Office of Finance Enforcement in a joint effort to combat money laundering.

SCBA staff have also given speeches to the Financial Institution Fraud Unit of the FBI's White Collar Crimes Section. These sessions have provided a valuable opportunity to share ideas with agents across the country. Every year since 1974, SCBA has sponsored a security management and fraud prevention seminar.

Let me now turn to some thoughts on the specifics of H.R. 3235, the Antimoney Laundering Act of 1993, introduced by Chairman Gonzalez and the distinguished subcommittee chairman, Mr. Neal.

SCBA is always supportive of responsible reforms to existing depository institution statutes and regulations that balance safety and soundness and enforcement concerns with the ability to operate community-based banking institutions in an efficient manner. Many elements of H.R. 3235 go a long way toward meeting that goal.

Great Western, along with SCBA, supports Chairman Gonzalez' efforts to strengthen the government's hand in the fight against money launderers and at the same time making life more difficult for money launderers themselves.

SCBA also commends Chairman Neal for cosponsoring the legislation and helping to move it forward. Several provisions of H.R. 3235 present valuable revisions to the laws combating money laundering.

In section 2, efforts are made to reduce the regulatory burden. With many millions of currency transaction reports [CTRs] already on file, banks have been overwhelmed by the number of reports submitted and the perception that few prosecutions are ever begun on the basis of these filings.

Great Western currently processes an average of 1,200 CTRs monthly. In the 5 years that I have been responsible for the program, I am personally aware of only one instance where this reporting has led to a conviction. Of course, we may have missed some others but this system does not appear to be a major source of investigative leads.

CTRs are also time consuming to complete. The paperwork requirements are often complex, particularly if you imagine the plight of a beginning level employee who is confronted with these forms.

I know you can't see this, but there are literally 55 boxes on the front of the form and then when they have to turn it over to use the second side there are another 30 boxes that they need to complete and every one of these boxes on the form has to be completed exactly.

I would suggest in this regard that some thought be given to weighing differently the importance of each entry in assessing compliance status. For instance, missing information about a depositor is weighed the same as if an institution forgot to list the date in six digit numerical order.

Besides branch review, Great Western operations staff looks at every piece of paper an additional three times to ensure accuracy. Toward this end operations staff make over 1,000 phone calls back to the branch in order to correct missing information.

H.R. 3235 would authorize the Treasury to substantially reduce the number of CTRs being filed and provide much-needed regulatory relief in this area. Great Western and SCBA welcome this constructive effort.

In section 3 a single designee agency is authorized to receive reports on suspicious transactions helping to eliminate duplication that now exist among the agency which is currently requiring separate notifications of suspicious activity. My staff at Great Western makes frequent calls to various agencies requesting interpretive guidance on the BSA and often gets different views; as a result and in order to prove the differences of opinion, we log every call and every response received. A single agency designee would eliminate this unnecessary process.

Section 4 requires the OCC and the Federal Reserve to establish a program to help examiners identify money laundering schemes. We believe that this effort would benefit very much the industry's active involvement. We at Great Western and SCBA would wel-

come the opportunity to participate and assist in these types of programs.

Sections 7, 8, and 9 of the bill expand the coverage of the money laundering statutes to require check cashing, currency exchange, money transmitting businesses, and casinos to be subject to the BSA reporting requirements. For some time, SCBA has advocated that reporting be required by all retail and other businesses in which money laundering may direct illegal funds.

One cautionary note may be raised with respect to section 9. It seems inconsistent that casinos or gaming establishments with annual revenues under $1 million might be exempt under this law. Also, as a result of the way this limitation is worded, it appears that to comply with the exemption provisions financial institutions would have to determine which casinos fall into this exemption category. We would prefer to look into the single agency or the designee to clearly define that process.

Section 11 provides for a review of the use of cashier's checks. SCBA would welcome the opportunity to participate in any review by the Treasury Department to the extent to which these instruments are vulnerable to money laundering.

Mr. Chairman, H.R. 3235 is a clearly positive step to strengthening the government's ability to eliminate money laundering while reducing the regulatory burden on financial institutions to comply with the law. SCBA welcomes the opportunity to work with you as this proposal moves through the legislative process.

Savings and Community Bankers of America appreciates the opportunity to share our thoughts and experiences with you and your colleagues. I would be happy to answer any questions that you might have related to my knowledge of Bank Secrecy Act as it affects Great Western.

Thank you.

[The prepared statement of Ms. Woolf can be found in the appendix.]

Chairman NEAL. Yes, ma'am. Thank you very much. And now, Mr. Silverman.

STATEMENT OF JEFFREY SILVERMAN, PRESIDENT AND CHIEF EXECUTIVE OFFICER, M.S. MANAGEMENT, INC., NORTHBROOK, IL, AND VICE PRESIDENT, NATIONAL CHECK CASHERS ASSOCIATION, INC.

Mr. SILVERMAN. Mr. Chairman, and members of the subcommittee, my name is Jeffrey Silverman. I am the president of M.S. Management, a family-owned business headquartered in Illinois.

We provide a broad array of financial services including check cashing, money order sales, government benefits distribution, and wire transfers to communities in three States. I am testifying today on behalf of the National Check Cashers Association, which represents approximately 4,500 neighborhood financial service centers employing about 25,000 local community residents.

Just as many consumers prefer the convenience of specialty stores to large department stores, so, too, do many consumers prefer the convenience of check-cashing centers.

In fact, Mr. Chairman, we consider ourselves the 7–11 of the financial services industry, serving an important market niche. A

top priority of our association is the education of our members about their responsibilities under the Bank Secrecy Act and our antimoney laundering statutes.

We have devoted substantial resources to this effort during the association's short history. At each of our last several national conferences, we have invited the Internal Revenue Service and Department of Treasury to participate in order to provide direct information on how to assist their efforts in fighting money laundering.

At our national convention we unveiled the fruit of a major antimoney laundering project. We have developed a comprehensive compliance manual written by Charles H. Morley, a recognized expert in the field, which was developed specifically for the check-cashing industry.

The manual will be distributed to all of our members and will include guidebooks for use in each location. These materials include both a compliance plan for each store as well as training and testing materials for employees. We take this very seriously.

I also have a leaflet for your review that was distributed at our most recent national convention advising our memberships of availability of the manuals.

We applaud the authors of this legislation for including section 8, a registration program for money transmitters. Check cashers agree that enforcement of the Bank Secrecy Act and other Federal statutes would be aided if the Department of Treasury could identify all companies engaged in money transmitting business.

We suggest that section 8 be strengthened by requiring disclosure of information involving any records of criminal activity, violations of fiduciary duties, fraudulent acts, or any license revocations. We must strongly object, however, to many of the provisions contained in section 7. This section is not relevant to the fight against money laundering. It calls for licensing of check cashers and money transmitters as a business, an issue that is a consumer protection matter not one of law enforcement.

H.R. 3235 urges the States to establish uniform laws for licensing check cashers and other nondepository financial institutions. Our industry has different product mixes, population density, and cost structures.

No uniform State law could fairly serve any consistent purpose. A review of the regulations in those States which now have licensing requirements would show substantial differences based on specific structure of the industry in each of those States.

The decision to license check cashers or money transmitter businesses should be left to the discretion of the individual States. The check-cashing industry is presently in 35 States, of which 11 are now regulated and more will be considering regulations this legislative session.

If Congress wants to enact a resolution urging the States to create a model statute, then it would be far better to advocate a model antimoney laundering bill. Such a resolution could urge enactment and strong enforcement of the laws against money laundering on the State level to coordinate with the efforts of the Department of the Treasury. For that to be effective, such a model law, of course, should apply to all nondepository financial institutions such as grocers, convenience stores, travel agencies, and corner newsstands.

Experience has shown that licensing financial institutions does not prevent money laundering. It is necessary to adopt and enforce strict money laundering statutes in order to have any impact. This is a far more direct and effective way to control money laundering in the United States.

I would like to briefly discuss H.R. 1448 which is relevant to this hearing because it would regulate check cashers out of business. Our association urges the subcommittee to reject any attempts to add provisions of H.R. 1448 to this money laundering legislation.

As originally drafted, H.R. 1448 calls for the Federal Trade Commission to regulate the industry with maximum fees set at a level well below all regulated States. Because of the diversity of our industry, we strongly suggest that any consideration of check-cashing rate structures be made at a State level where individual business decisions differences can be explained.

Mr. Chairman, we support your efforts to fight money laundering and look forward to working with you.

Thank you.

[The prepared statement of Mr. Silverman can be found in the appendix.]

Chairman NEAL. Thank you, sir, very much, Mr. Silverman.

And now I would like to hear from Ms. Mileo. I hope I am pronouncing that right.

Ms. MILEO. That is quite all right.

STATEMENT OF JANICE MILEO, VICE PRESIDENT AND CORPORATE COUNSEL, TRAVELERS EXPRESS CO., INC., ST. LOUIS PARK, MN

Ms. MILEO. Thank you.

My name is Janice Mileo. I am vice president and corporate counsel of Travelers Express Co., headquartered in Minneapolis, Minnesota, and we appreciate the opportunity to testify on H.R. 3235.

Travelers Express is the Nation's largest issuer of money orders and has been in the money order business since 1940. In my testimony today I will provide you with some background information on Travelers Express and then discuss those portions of H.R. 3235 that are of greatest concern for Travelers Express as a nonbank financial institution.

The scope of the registration requirements and the need for uniformity in State licensing laws. Travelers Express issues over 250 million money orders a year through a network of independent sales agents. The independent agents are located in all 50 States and include over 40,000 sales locations such as banks, credit unions, convenience stores, supermarkets, other retail locations, and check-cashing outlets. In Washington, DC, these agents include such locations as Giant food stores and the Department of Labor Federal credit union.

In your home State of North Carolina, Mr. Chairman, Travelers Express has approximately 1,400 agents issuing over 6 million money orders a year.

Travelers Express is a highly regulated company licensed by the banking departments of the States in which we operate. We submit detailed reports of our operations to the regulatory agencies, in-

cluding audited financial statements and information about the agents who sell our money orders.

In addition, a number of States conduct on-site examinations of licensees such as Travelers Express to verify the safety and soundness of our operations as well as statutory compliance.

Although there has been much discussion of unlicensed money transmitters, there are a number of responsible licensed companies that are nonbank financial institutions like Travelers Express in this industry. And we want to make sure that the existence of some of the illegal and unlicensed money transfer operations don't overshadow the valuable services provided by legitimate nonbank businesses.

Money orders, as an example, are a convenient and inexpensive payment alternative to checking accounts. The maximum face amount of money orders is typically $300. And most people who use money orders do so on a regular basis, buying two to three money orders a month to pay their rent, utility bills or other types of payments. Generally fees are low, usually between 75 cents and $1. The low fees and widespread availability are possible because issuing money orders is a highly automated, efficient, and simple process.

Most of the businesses that sell money orders such as the neighborhood grocery store or drug store do so as a service to their customers. The sale of money orders is an incidental part of their business.

I will now turn to our comments on H.R. 3235. Section 8 of the bill proposes that money-transmitting businesses, including those that issue money orders, register with the Secretary of the Treasury. The approach is to have any substantive licensing or regulations at the State level, as we heard earlier, pursuant to the uniform law recommendations of section 7. Thus the States would handle the licensing functions and Treasury would have the information necessary to enforce the money-laundering requirements.

We support this division of responsibility. We believe the States are the best equipped to deal with the licensing issues and the Federal Government is in many cases best equipped to deal with the specialized area of money-laundering regulation.

What we do not want to see is unnecessary duplication of the regulatory function. It should be clearly understood that the registration requirement is simply that and no more so that it does not grow to be a form of licensing which duplicates what the States are already doing.

We are concerned with the very broad authority given to Treasury to request such other information as the Secretary of Treasury may require. Unless this authority is limited, the Treasury registration process could easily grow into full-blown licensing, duplicating the information we already provide to the States.

Our second comment regarding section 8 is also one of clarification. We support this proposal with the understanding that our independent agents sell money orders but do not issue money orders. This is a somewhat subtle distinction but of great importance to Travelers Express.

Under existing State laws, the money order company which is the licensee is defined as the issuer. The money order company's

agents in turn sell rather than issue the money orders. Thus, Travelers Express agents should not be required to register as money-transmitting businesses unless they otherwise fall within the definition of a money-transmitting business, since the money order sales are only an incidental part of their business.

If any additional regulation is contemplated, care must be taken that the regulations are workable and not constantly changing. Most of our agents are small mom-and-pop type operations who, if overburdened with regulatory requirements, may terminate their money order sales. This would have an impact on the availability of money orders to people who use them for their day-to-day transactions.

Turning to section 7 of H.R. 3235, which proposes that the States should establish uniform laws for licensing and regulating money-transmitting businesses, we support this proposal as it applies to money order issuers. Travelers Express believes there presently exists adequate licensing and regulation for money order issuers, but we nonetheless support efforts aimed at improving uniformity in State licensing laws.

Uniformity is of great importance to national companies such as Travelers Express because it is extremely burdensome and costly to comply with the different licensing scheme in every State. As part of our effort to comply with the various State regulatory requirements, we submit more than 200 different regularly scheduled reports to the States annually.

In an attempt to achieve some uniformity in State licensing laws, Travelers Express works closely with the Money Transmitters Regulatory Association, known as MTRA. One of their endeavors has been the development and enactment of model licensing legislation. During the 1993 legislative session, Indiana became the first State to adopt the MTRA's Model Act. We support efforts to encourage uniformity in this area.

In conclusion, Travelers Express stands ready to work with the Federal Government to develop reasonable steps to prevent money laundering through nonbank financial institutions. Certainly, the first steps toward curtailing money laundering should be through increased resources to identify unlicensed illegal money transmitter operations. It is of little help to increase requirements on legitimate business if illegal money transmitter operations continue to operate.

We also believe a continuing dialog between the industry, Federal regulators, and law enforcement is very important. This dialog can permit efforts that are more focused and effective and do not increase costs and burdens across the board, which appear to be the goal of this bill, and we certainly support that.

The establishment of the Bank Secrecy Act Advisory Group on Reporting Requirements by the Department of the Treasury is a positive step toward improving communication between industry and government. Travelers Express has applied to the Department to be represented on the advisory group. Nonbanks need to have a voice in Federal policymaking comparable to that of banks, especially since our operations vary considerably from banks.

We appreciate the opportunity to testify before the subcommittee. We look forward to continuing to work with the regulators and law

enforcement to identify and deal with any bad apples in the industry while at the same time avoiding undue burdens on the vast majority of necessary and routine money order transactions.

Thank you.

[The prepared statement of Ms. Mileo can be found in the appendix.]

Chairman NEAL. Thank you, ma'am, very much.

Mr. McCollum.

Mr. MCCOLLUM. Thank you, Mr. Chairman.

I just have one or two very quick questions here that I would like to ask. The first one has nothing to do, I think, with Mr. Silverman, since it is narrowed to those of you who are doing this reporting right now.

But I am rather curious—I will start with Ms. Wilson—with regard to this $3,000 recording aspect as opposed to the CTR reporting requirements, you all keep the records I know, and I am sure Ms. Woolf does, has anybody to your knowledge in law enforcement ever used—maybe they do, but if they do, tell me how frequently—have they ever used that information? Have you ever had anybody, other than somebody who is a regulator, making sure you have complied, use that information?

Ms. WILSON. We keep a list. No one has ever asked us.

Chairman NEAL. How about you, Ms. Woolf?

Ms. WOOLF. Same, no one has ever asked for it.

Mr. MCCOLLUM. Ms. Mileo, do you keep the list?

Ms. MILEO. We would not keep it. In the field, the independent agents would keep the log, and in fact Mr. Silverman's operations are also subject to that.

Mr. MCCOLLUM. You do keep a list. I didn't think you did.

Mr. SILVERMAN. Yes, we do.

Mr. MCCOLLUM. Has anyone ever asked to look at it?

Mr. SILVERMAN. On a State level, yes.

Mr. MCCOLLUM. The State prosecutors have looked at it?

Mr. SILVERMAN. Correct. We are also subject to State regulations and the State in their audit procedure review our $3,000 reporting requirements log.

Mr. MCCOLLUM. I am not looking so much at the regulators. I am wondering whether anybody from a body of law enforcement has looked at it.

To your knowledge, has anything under your purview ever been used in that $3,000 to $10,000 category?

Mr. SILVERMAN. Yes. Our operations are reviewed on an annual basis by IRS and other compliance regulators on a Federal level, and we do find that they do examine the $3,000 logs and also look for copies of our cash transactions reporting filings.

Mr. MCCOLLUM. But this is a comment; I am very sensitive to the burdens that all of this puts on each of you and I know that it seems ridiculous at times. Law enforcement has told us in previous hearings that we may—I don't know if we are going to have more witnesses on this or not, but if we do, we may have somebody else that comes in here and says the same thing. That is, that they don't anticipate a large review of all that paper you got down there, Ms. Wilson. They don't expect anybody to ever look at 99.41 percent of it. But by golly, when they get a lead, they want to know

that that paper is in the warehouse and they want to use it. And they will cite a case or two. I guess it is the lack of public interest in all of this.

You all have been very helpful today. I don't have a lot of questions because each of you have responded I think to what we had in mind in addressing this bill. And obviously, with the exception of Mr. Silverman's concern about the sense of the Congress/State regulatory feature, I think everybody generally supports what is in this legislation.

Thank you very much, Mr. Chairman.

Chairman NEAL. Yes. Thank you.

On the same subject, you said in your testimony, Ms. Wilson, that no one followed up on the suspicious reports at all.

Ms. WILSON. On this one particular case, that is true.

Chairman NEAL. Well, as I recall your testimony, that was the bulk of the reports had to do with this one case.

Ms. WILSON. That is correct. That is correct. We made numerous phone calls. We did everything. We reported on this last May. We did file the information. We did follow up and no one has come in to inquire further, no subpoenas.

Chairman NEAL. You brought this to the attention of law enforcement?

Ms. WILSON. Yes, sir. Since we testified in May, we had numerous phone calls and everyone has said, "Is that one of my cases?" No, it was not. We have had numerous phone calls but still haven't had any action on that particular case.

Chairman NEAL. OK. Not very inspiring, is it?

Ms. WILSON. Yes, sir.

Chairman NEAL. Well, I think your testimony has been very useful.

Mr. Silverman, you don't think that there should be a registration requirement?

Mr. SILVERMAN. Our national association has submitted a proposal that would require registration on a State-by-State basis. We believe that there should be a vehicle for the government to identify our industry and identify check cashers.

What we disagree with is section 7, which deals more with consumer protection, licensing, or the ability of the States to grant permission for our industry to cash checks or not to cash checks.

My interpretation is that there is a terminology concern that the bill is looking for a registration requirement which would require disclosure of ownership, identification of the principal owners and officers of check-cashing companies, identification of our locations and any branches, and submission of fingerprints of ownership to aid in background checks. We feel it is very important that our industry is identified, that our industry does full disclosure. Where we disagree, is that we would need permission to operate, which is what we consider as licensing.

Chairman NEAL. Let me say to all of you, I want you to know that we appreciate your testimony and we will take your suggestions to heart. They have been useful to us. We will study your full testimony, not only your summarized statement.

Mr. BACHUS OF ALABAMA. Mr. Chairman.

Chairman NEAL. I will come right back to you, Mr. Bachus.

I was going to ask something I needed to clarify, if I could, from Ms. Mileo. You are saying that you want to differentiate between your company and the agents of your company, which I understand to be often small grocers and other community businesses; is that right?

Ms. MILEO. That is right. It is a matter of clarifying the language in how it applies. I think when language was drafted, and we have had some discussions with the staff, that issue was not necessarily considered. And we have talked with the staff and I think we are on the road toward resolving that issue. So I see it as a matter of clarification of the situation that was not anticipated.

Chairman NEAL. I am not sure I understand quite how your business works. I gather that you have agents that sell money orders.

Ms. MILEO. Right.

Chairman NEAL. That is the way that works.

Ms. MILEO. Exactly.

Chairman NEAL. And you are saying if it is a small grocer or something, that registration would be too burdensome to them or filing reports would be?

Ms. MILEO. That is right, and also the information that would be provided to Treasury would, I think, be an overload. And again, we are talking about providing the information to Treasury that they really need rather than providing stacks of paper that is not going to be useful to them.

Chairman NEAL. What do you think Treasury really needs?

Ms. MILEO. As I mentioned, we have 40,000 sales locations and other money order companies would have a similar, if not a greater amount, so we would be talking about additional information to Treasury over and above I think what they had already. They were estimating 50- to 150,000 money transmitters, so we would be doubling that and I think not providing very useful information. So it is a combination of burden on the——

Chairman NEAL. Let me see. What do you think is the useful information? What do you agree should be provided?

Ms. MILEO. I think the information about money transmitting businesses who are primarily engaged in money transmitting or the other definitions that are covered in the current definition, so I think the current definition is appropriate other than a clarification that I had mentioned.

Chairman NEAL. Well, let me just—are you saying that you don't think that, for instance, the typical agent that sells your money orders is—what?—important enough to keep up or doesn't do volume sufficient to keep up with?

Ms. MILEO. That is right. That isn't as vulnerable to money laundering as a business that is engaged primarily in money transmitting.

Chairman NEAL. Why is that? The volume is so small?

Ms. MILEO. The volume is so small.

Chairman NEAL. Typically, what are you talking about?

Ms. MILEO. Typically, normally 200 money orders a month, 200 to 300 money orders a month total. That would be approximately $100 per money order. That is, the average money order is fairly

small. As I mentioned, the maximum is normally $300 a money order.

Chairman NEAL. All right.

Ms. MILEO. So that would be a relatively small number per day.

Chairman NEAL. Mr. Bachus.

Mr. BACHUS OF ALABAMA. First of all, I would like to ask Ms. Wilson and Ms. Woolf, the ABA has proposed raising the CTR threshold to $25,000 because of inflation. Do you all support—do you feel that that makes sense?

Ms. WILSON. That would be extremely helpful. I would support that.

Ms. WOOLF. I would also agree.

Mr. BACHUS OF ALABAMA. All right. Thank you.

My next question is for Mr. Silverman. You talked about your industry being somewhat self-regulated, I think. Does the National Check Cashers Association, do you regulate or supervise the membership in any way?

Mr. SILVERMAN. Our industry has a presence in approximately 35 States in the country. Eleven of those States during the last 10 years have introduced legislation that has resulted in regulation of the check cashers within their States.

Each State is regulated in a different manner, but there has been a State-by-State review of our industry. There have also been States that have had legislation introduced and not pasted. Some of the States have decided not to have legislation and certain States decided to have legislation.

Mr. BACHUS OF ALABAMA. So 24 States that you have membership in don't regulate check cashers at all?

Mr. SILVERMAN. There is presently no regulation in approximately 24 States. There is legislation being introduced, though, this session in several nonregulated States.

You have to realize our industry has really become more of an industry within the last 10 years. Prior to 1980, our industry was basically located in New York and Illinois. Both of those States are regulated States. Through banking deregulation and our financial service requirements, our industry has grown substantially in the last 10 years. During the last 10 years, a third of the States that we have presence in have regulation and there are other States presently looking at it.

Mr. BACHUS OF ALABAMA. Do you all investigate at all any of your membership for money laundering? Do you have any provisions for doing that?

Mr. SILVERMAN. Money laundering is a top priority of our industry. As a result we have prepared a money laundering document authored by Charles Morley which our membership is now being—circulated to our membership. We also have a code of ethics that our industry has adopted. We are a very close-knit industry. We have some self-policing in the industry that if either members or nonmembers are involved in any type of activities that are criminal in nature, we do report them to the local authorities.

I believe within the last year an association in the Maryland area had reported some payday loan problems to the local authorities, and that is presently being investigated.

Mr. BACHUS OF ALABAMA. Was this your association?

Mr. SILVERMAN. It was not our national association, it was through a State association. Most of the State associations are members of our national association.

Mr. BACHUS OF ALABAMA. Do you all have an investigative arm?

Mr. SILVERMAN. No, we do not.

Mr. BACHUS OF ALABAMA. Has the national association made any formal complaints against members?

Mr. SILVERMAN. Not at the present.

Mr. BACHUS OF ALABAMA. Have you ever found any of them guilty of violation of the code of ethics that you have?

Mr. SILVERMAN. Our association is approximately 4 years old.

Mr. BACHUS OF ALABAMA. I understand.

Mr. SILVERMAN. We are working primarily right now on money-laundering issues, legislative issues.

Mr. BACHUS OF ALABAMA. I understand that. You were just saying you had a code of ethics. Have you ever disciplined anyone or found them in violation of the code of ethics?

Mr. SILVERMAN. No.

Mr. BACHUS OF ALABAMA. And I am not criticizing you.

Mr. SILVERMAN. We found that most of the members quite honestly that have joined our industry are looking to legitimize and add credibility to our industry, and through this process today, we feel that our association has done so.

Mr. BACHUS OF ALABAMA. I would think that in fact your membership would be those that are seeking to operate legally and ethically. I am not criticizing the association.

What percentage of money—of check-cashing businesses belong to your organization? Do you have any information or facts on how many check-cashing companies there are and how many are members of your association?

Mr. SILVERMAN. There are many—it depends on how you define a check-cashing company. Grocery stores cash checks, liquor stores cash checks, local newsstands cash checks. Our industry are self-standing retail establishments whose sole purpose is providing financial service to the community.

There are approximately 10- to 12,000 retail check-cashing centers around the country. I believe anywhere between 4,000 and 5,000 locations are now members of our industry, and that number is growing substantially.

We just had a national convention in Chicago where we had over 1,200 people attend, whereas 4 years ago our first meeting consisted of 17 people in New York.

Mr. BACHUS OF ALABAMA. Do you have any idea of what the volume of 10- to 12,000 businesses in dollars check-cashing volume is annually?

Mr. SILVERMAN. No, I do not.

Mr. BACHUS OF ALABAMA. OK. I have no other questions.

Chairman NEAL. Thank you, Mr. Bachus.

Let's see, have we had the first or second bell?

Mr. HINCHEY. Second.

Chairman NEAL. Second.

Mr. Hinchey, do you have any questions?

Mr. HINCHEY. No, Mr. Chairman.

Chairman NEAL. All right. Thank you.

I would like to thank our witnesses again, and we will study your testimony carefully.

Mr. BACHUS OF ALABAMA. Can I ask one other question?

Chairman NEAL. Let me say, without objection, we would like to be able to send some further questions for the record.

Mr. BACHUS OF ALABAMA. This is for Ms. Mileo. You all are the largest in the industry?

Ms. MILEO. Yes.

Mr. BACHUS OF ALABAMA. Do you all analyze transactions by your independent contractors to see—do you do any analysis?

Ms. MILEO. Yes, we do inspections to see whether they may be engaged in money laundering. We have a compliance program for our company, which includes monitoring the transactions from the agents, and we have had occasion to report suspicious transactions to the authorities and have done so.

Mr. BACHUS OF ALABAMA. Ms. Mileo, would you supply me with, say, a synopsis of that program?

Ms. MILEO. Sure. We would be pleased to.

[The information referred to can be found in the appendix.]

Mr. BACHUS OF ALABAMA. Thank you very much.

Chairman NEAL. Did you find the authorities followed up, Ms. Mileo?

Ms. MILEO. Excuse me?

Chairman NEAL. Did you find that the authorities followed up when you gave them this information?

Ms. MILEO. In some cases, yes. In some cases, no. A lot depends on the dollar amount. Unfortunately, with smaller dollar amounts involved, which probably tend to be our types of transactions as opposed to the banks, it is very hard for law enforcement to justify taking action when it is a relatively small dollar amount.

Chairman NEAL. Who do you supply that information to?

Ms. MILEO. Normally, the local IRS CID at the location where the information relates to.

Chairman NEAL. Who do you supply the information to, Ms. Wilson?

Ms. WILSON. It depends on which financial institution, but we would usually work with the IRS CID and any local authorities depending on the type of activity. We work closely with them and have a good relationship with them.

Chairman NEAL. Thank you. The subcommittee stands adjourned.

Ms. MILEO. The IRS has been very responsive in getting back to us.

Chairman NEAL. Thank you.

[Whereupon, at 5:08 p.m., the hearing was adjourned.]

APPENDIX

October 20, 1993

OPENING STATEMENT OF THE HONORABLE STEPHEN L. NEAL AT THE HEARING ON H.R. 3235, THE ANTIMONEY LAUNDERING ACT OF 1993

October 20, 1993

This spring the Full Banking Committee held hearings on the government's efforts to combat money laundering. Those hearings were part of Chairman Gonzalez' efforts to conduct a comprehensive review of the anti-money laundering programs, and I commend him for those hearings.

As a result of what we learned at those hearings, I joined with Chairman Gonzalez in introducing H.R. 3235 last month. He has submitted a written statement for today's hearing, and I ask unanimous consent that his entire statement be included in the record.

The legislation is designed to address two major problems that were identified at the hearings.

First, it was clear that the Bank Secrecy Act, the major piece of legislation directed at combatting money laundering, was generating an ever rising flood of paper. Filings of currency transaction reports by banks have increased more than 10 percent

a year for each of the past eight years. This year filings will top 9 million reports on a half trillion dollars of volume.

Reports that have no law enforcement value waste money at both banks and the Treasury. According to the General Accounting Office, it costs banks anywhere from $3 to $18 per report to file a CTR. It costs the Treasury $2 to process each report.

Last year banks filed more than 1000 or more CTRs on each of the 657 largest businesses in the United States. These filings accounted for 2.3 million CTRs, or 25 percent of all CTRs filed. Those CTRs, filed on reputable and well-known retailers, supermarkets and others, have no enforcement value.

H.R. 3235 recognizes that fact. Working with the Treasury Department, Chairman Gonzalez and I have developed a goal of reducing CTR filings by 30 percent.

The reduction in filings is aimed at enhancing law enforcement. Unnecessary filings make the job of law enforcement harder, not easier. By eliminating unnecessary filings, the value of the remaining filings is enhanced. The Treasury will be able to take the resources

that currently go to handling the needless paperwork and use them for productive law enforcement activities.

The bill contemplates two means of meeting that goal, while recognizing that the Treasury should have the flexibility that regulators need to meet changing conditions.

First, the bill requires that the Treasury develop and publish a list of persons on whom no CTRs need to be filed. This will enable banks to know without a doubt that they need not file any CTRs on Supermarket X or Retailer Y.

Second, banks will be able to submit proposed exempt lists to Treasury for approval. Again, this will eliminate any uncertainty or hesitation on the part of financial institutions to exempt institutions, since such exemptions would be approved by Treasury. Law enforcement benefits because Treasury decides who is on each institution's exempt list and has a veto over the exempt lists.

The second major problem identified at the hearings was the increasing use of non-bank financial institutions by criminals for laundering money.

By and large, depository institutions do an excellent job in complying with the Bank Secrecy Act. Indeed, the success in compliance is one reason why CTR filings have been increasing at double digit rates year after year.

Criminals recognize that they must be able to convert their cash into other assets. With the doors of depository institutions being slammed in their faces, they must look for other means of laundering their cash.

Our success in making money laundering more difficult, especially through banks, has driven the launderers to rely increasingly on using non-bank means of money laundering. Cash must now be laundered through seemingly legitimate enterprises, such as check cashers, jewelry or liquor stores, or other activities to make the cash seem as if it comes from legitimate sources.

H.R. 3235 recognizes the problem and would encourage the States to develop uniform laws to license and regulate check cashing, money transmitting, currency exchange and other similar businesses. This provision is similar to one which has passed the

House three times in the past two Congresses. I hope this will be the year in which this provision is finally enacted.

Our hearing today gives us the opportunity to hear from the Administration and industry on H.R. 3235. I look forward to moving anti-money laundering legislation, and the comments we receive today will enable us to hone the legislation so that we have a bill that produces more efficient and effective anti-money laundering enforcement.

Statement of Henry B. Gonzalez, Chairman
Committee on Banking, Finance and Urban Affairs
House of Representatives

Before the
Subcommittee on Financial Institutions Supervision,
Regulation and Deposit Insurance

Relating to
H.R. 3235 - The Anti-Money Laundering Act of 1993

October 20, 1993

I greatly appreciate Chairman Neal holding a hearing on H.R. 3235, the Anti-Money Laundering Act of 1993, which he and I introduced on October 7, 1993. I believe passage of H.R. 3235 will make the federal government's anti-money laundering efforts more efficient and effective while, at the same time, make the laundering of money by criminals more difficult and less profitable. Thus far, reaction to the bill has been uniformly positive.

I look forward to hearing from the witnesses who will appear before the Subcommittee today and would like to take this opportunity to share with the Subcommittee, some of the rationale behind the language you have before you in H.R. 3235.

Probably the most visible aspect of H.R. 3235 requires the Secretary of the Treasury to substantially reduce the number of currency transaction reports (CTRs) being filed in accordance with the Bank Secrecy Act. The Secretary is to accomplish this reduction by exempting depository institutions from CTR reporting requirements on certain transactions in excess of $10,000 where the Secretary determines that the routine reporting has little or no law enforcement value. Requirements for filing CTRs on transaction conducted by individuals are not affected, nor are the reporting requirements for non-bank financial institutions as defined in the Bank Secrecy Act.

This initiative was prompted, in part, by the success Treasury has been having in obtaining compliance with the Bank Secrecy Act reporting requirements. Today there are about 50 million CTRs on file and the General Accounting Office estimates that the data base will grow to 92 million by 1996. According to the General Accounting Office, 30-40 percent of the 9 million CTRs being filed annually could be exempted because they do not add to law enforcement efforts to detect money launderers. For example, in 1992, banks routinely filed about 80,000 CTRs valued at $9 billion on the currency transactions of one retail business with numerous stores throughout the country. It seems highly unlikely that law enforcement could identify money laundering schemes from those CTRs. Another example of where CTRs may be of little value are

those being filed by banks on the transactions of federal, state and local governments, such as daily deposits by state motor vehicle departments.

Under H.R. 3235, depository institutions will continue to be responsible for reporting on suspicious activities which is a key ingredient in the anti-money laundering effort. Exempting depository institutions from reporting on certain routine transactions puts an additional burden on the institutions to know their customers and report suspicious transactions. H.R. 3235 requires the Secretary of the Treasury to clarify how suspicious transaction reports will be handled and to designate a single agency for receiving such reports.

Another key provision of the proposed legislation requires Treasury to extend the BSA reporting requirements to checks, drafts, notes or other instruments drawn by or on a foreign financial institution whether or not in bearer form. Full Committee hearings held earlier this year in San Antonio documented that the use of such instruments, in nonbearer form, are favored by money launderers because there is no reporting requirement. An important distinction of this provision is that it places the reporting responsibility on the beneficiaries or persons transporting such instruments into the United States by requiring them to file a Report of International Transportation of Currency or Monetary Instruments (commonly referred to as CMIR).

H.R. 3235 requires all casinos and gaming establishments, including Indian gaming operations, with gross gambling revenues in excess of $1 million to comply with the BSA reporting requirements.. The provision makes it clear that Indian gaming establishments (some of which are already voluntarily filing CTRs) are required to file CTRs and it revokes any exemptions granted in the past by Treasury for casinos operating in Nevada. I believe that all casinos and gaming establishments should be treated the same under the Bank Secrecy Act considering that new casinos and gaming establishments sprouting up across the country.

Other provisions of H.R. 3235 require: (1)the Secretary of the Treasury to delegate its authority for assessing penalties for noncompliance with BSA requirements to Federal banking regulatory agencies, (2)the Office of the Comptroller of the Currency and the Federal Reserve to establish a pilot program to test the feasibility of bank examiners employed by the agency to identify money laundering schemes involving depository institutions, and (3)Treasury to study the extent to which cashiers' checks are vulnerable to money laundering schemes and the extent to which additional recordkeeping requirements should be imposed on financial institutions which issue cashiers' checks.

The Federal government is not alone in the fight against money laundering. One by one, states are finding that money launderers are moving into their states because others are getting tougher to operate in. In this regard, H.R. 3235 provides the sense of the

Congress that States should license and regulate certain non-bank financial institutions which are not otherwise regulated by the Federal government. The provision calls for the development of model statutes that States may use in establishing the licensing program. As part of this effort to bring the federal and state anti-money laundering efforts more in concert, H.R. 3235 requires any person who owns or controls certain non-bank financial institutions, including money transmitting and remitting businesses, to register with the Secretary of the Treasury. This provision is not aimed at all non-bank financial institutions, but rather at those non-bank financial institutions whose primary business it is to provide check cashing, currency exchange, or money transmitting or remittance services, or issue or redeem money orders, traveler's checks and other similar instruments.

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You will hear today from Assistant Secretary for Enforcement, Ron Noble, who will give us the reactions of the Treasury Department, the principal administrator of the Bank Secrecy Act. Assistant Secretary Noble has twice appeared before the full Committee on this issue and I believe you will find him well informed and genuinely concerned about the problems of money laundering.

I believe that with the support of the Administration and the financial institutions industry, we can quickly move this legislation to the full House for consideration. These hearing are the first step toward achieving that goal. I am hopeful your Subcommittee will schedule a markup as soon as practical. I can assure you that soon after that step, H.R. 3235 will be put on the agenda for consideration by the Banking Committee.

Once again, thank you for your support and quick action.

Statement of the Honorable Ronald K. Noble
Assistant Secretary for Enforcement
U.S. Department of the Treasury
before the House Committee on Banking, Finance and Urban Affairs,
Subcommittee on Financial Institutions,
Regulation and Deposit Insurance

Chairman Neal and Members of the Committee, the Department of the Treasury is happy to have an opportunity to testify on H.R. 3235, the Anti-Money Laundering Act of 1993, and to update the Subcommittee on Treasury s activities in the field of money laundering and Bank Secrecy Act enforcement since I last appeared before the Full Committee this summer We also wish to express our appreciation for the responsiveness of the Committee and Subcommittee s Staff to Treasury s concerns as this bill was being drafted. The result has been a bill which Treasury can largely endorse.

Money Laundering Review Task Force

The last few months have seen unprecedented activity at Treasury. As Treasury promised before the full Committee last May, I have established a Money Laundering Review Task Force staffed by experienced agents, analysts, and regulators from every component of Treasury with money laundering responsibilities. For the first time in twenty years, we are taking a comprehensive look at our anti-money laundering programs, especially the way we exercise our authority under the Bank Secrecy Act (BSA). In the face of a burgeoning money laundering problem and strains on government and financial institution resources, we cannot afford to continue business as usual.

To lead this initiative, we have been fortunate to recruit Mark Matthews, a former Assistant United States Attorney, Southern

District of New York, with extensive experience in money laundering prosecutions and the wealth of skills necessary to bring a very difficult and complex project to fruition.

The Task Force is to establish a strategy to employ our resources and legal authorities in the most efficient way possible to have the maximum impact on the money laundering problem in 1993 and beyond. A top priority is to reduce regulatory burdens on financial institutions and to communicate better with financial institutions on their roles and responsibilities. The first stage, which is well underway is an introspective evaluation of Treasury s programs and development of recommendations on a number of topics from form simplification to suspicious transaction reporting. The group will soon be reaching out to Justice and the other agencies with money laundering responsibilities, and then to the private sector. We have set a very short time frame for the group's work so we can move forward with implementation as soon as possible.

H.R. 3235

I would now like to turn to H.R. 3235. This bill was developed by the full Committee and Subcommittee in close cooperation with Treasury. It arises from some of the same concerns that caused Treasury to establish the Money Laundering Review Task Force -- that aspects of our enforcement programs have become dated, inefficient, and are in need of substantial revision.

The timing of the bill is not optimum in terms of the work of the Task Force. Several provisions in the bill correspond to the thinking and recommendations of the Task Force to date. However, other ideas of the group are preliminary and need careful venting within and without the government before Treasury would be able to propose specific legislative changes. Other issues have not yet even baen discussed within the group. As time permits, we

hope that the Committee will be responsive to additions or modifications as the bill proceeds to reflect the work of the Task Force.

Section 2 - Bank Exemptions from Currency Transaction Reporting

Section 2 addresses one of the issues that was of the first order of business for the Task Force -- how to reduce the data base of Currency Transaction Reports (CTRs) filed by financial institutions on transactions over $10,000. Banks, (including savings associations and credit unions) are filing millions of reports annually on transactions for accountholders which they may exempt under Treasury regulations We believe approximately 30% of the estimated 9 million Currency Transactions Reports which will be filed this year may fall into this category.

There are several causes for this phenomenon. First, the Treasury procedures for exemptions have become cumbersome and difficult to understand. Often it is easier to file than to apply for and maintain exemptions. Secondly, as banks automate their BSA programs and magnetically file CTRs, it may be just as easy and cost effective to file on all transactions. Banks are also concerned that if they improperly exempt transactions, they may be subject to BSA civil penalties by Treasury.

Section 2(a) sets some broad and sensible outlines for Treasury's revision of the exemption process. The bill envisions two broad categories of exemptions The first would be mandatory. The Secretary would be required to exempt depository institutions from CTR reporting on transactions with 1) other depository institutions, 2) federal state and local governmental and quasi-governmental entities and 3 businesses or categories of businesses whose reports "have little or no value to law enforcement." The Secretary is to publish a list of such entities at least once a year.

Under the current regulations, transactions between depository institutions are excepted and transactions with governmental agencies may be exempted by banks. What is new is the concept of a published list of businesses which can be exempted under all circumstances. This list would most likely be composed of nationally-known, high-volume transactors.

The second category is discretionary exemptions. The Secretary retains discretion to allow banks to exempt other qualified business accountholders based on criteria and procedures to be established by regulations, including information required to be submitted by the customer The Secretary will be required to publish guidelines for granting such exemptions and may publish a list of types of businesses which may not be exempted for banks to use in selecting customers for exemption. After a first time submission of exemption lists to Treasury a bank would be required to review its list and submit modifications to the Secretary at least annually. This would be a departure and improvement from the current procedure where the Secretary only reviews selected lists upon request. An exemption would ba deemed approved unless Treasury objected to it.

There would be a new "limitation on liability" for banks that follow the exemption procedures. A bank would not be subject to a BSA penalty for failure to file unless it files bad or incomplete information on the customer or had reason to believe the customer did not meet the regulatory criteria for exemption at the time the exemption was granted. The bill provides that this limited liability does not affect the obligation to report suspicious transactions or Criminal Referral Reports The Secretary would retain the authority to revoke any exemptions at any time. While we understand the Committee's desire to offer the limitation on liability as an incentive for banks to use exemptions, it presents practical problems for Treasury. Treasury may be inundated with lists at the beginning of the new

process and mistakes will be bound to be made. One option might be to stagger implementation geographically.

As a companion provision in subsection 2(b), the bill requires that the Secretary "seek to reduce" CTR filings by at least 30% of the annual rate for the year previous to the date of the Act. A report is required to Congress within six months on progress made in this regard and annually at the and of each calendar year after date of enactment. The 30% is what should roughly follow from improved exemption procedures.

This is only a starting point. These provisions alone do not guarantee that banks will avail themselves of the exemptions process. The specific details still need to be worked out by Treasury to insure development of the simplest procedures possible, under clear guidelines, to encourage banks to take advantage of exemptions Treasury has no authority to prohibit banks from filing and if systems make filing easier they will no doubt continue to file.

In section 2(c) the Secretary is directed to take action as may be appropriate to redesign the format or eliminate information of little value to law enforcement from the CTR form. This provision follows the first recommendation of the Money Laundering Review Task Force which is to pare down the information called for in the CTR and eliminate all the information possible without substantial detriment to its analytical use.

Section 3 - Suspicious Transaction Reporting

Another very complex issue which is in the process of being tackled by the Task Force is the question of suspicious transaction reporting. It is undisputed that an essential complement to currency reporting is alert and timely reporting of

suspicious activity -- cash and non-cash -- to law enforcement. Treasury and this Committee have listened to many complaints from financial institutions that the current system is too complicated and duplicative and that many reports are not being acted upon by law enforcement. We agree that there is merit to these complaints and that there should be a substantial rethinking of how suspicious activities indicative of money laundering activity and BSA violations are handled. The proposal in section 3, directing the Secretary to establish a single government point for suspicious reports is an expression of the Committee's concern, but does not rectify the situation.

Treasury wants to move towards a less burdensome and more effective system for reporting suspicious transactions. The Task Force s initial thoughts are that, under the authority of 5318(g) Treasury should develop one, simple form for reporting possible money laundering or BSA violations to be used for cash and non-cash transactions, by banks and non-bank financial institutions (NBFIs), and as soon as possible after the activity. The forms would be filed with Treasury and be shared with other law enforcement agencies in appropriate money laundering cases and routinely to financial institution supervisors. Under certain circumstances we would continue to encourage financial institutions to call the local IRS office, rather than waiting to file a form. Again, this is a preliminary proposal and many details remain to be worked out.

The Task Force is also reviewing how better to help financial institutions identify suspicious transactions and how law enforcement can be more responsive to financial institutions with feedback without compromising investigations. Another area for study is how we can better follow up on suspicious transactions and improve our ability to evaluate the quality and importance of the transaction reported.

Section 4 - Money Laundering Scheme Detection by Bank Examiners

Section 4 directs the Federal Reserve Board and the Office of Comptroller of the Currency to establish a pilot program to test the feasibility of using examiners to detect money laundering schemes in the banks they supervise. Treasury agrees that a pilot program in this regard is worthwhile but has reservations whether this is the most appropriate and useful employment of the anti-money laundering time and resources of the Federal banking agencies. We would agree that currently too much examination time is spent on technical review of BSA compliance. As we simplify BSA reporting and requirements Treasury will request that the agencies with BSA compliance responsibility such as the OCC and Federal Reserve spend more time assuring that banks have broad-based anti-money laundering programs, focusing equally on suspicious reporting and measures such as know-your-customer programs.

Section 5 - Foreign Bank Drafts

Under the BSA, Treasury requires that reports of cross-border transportations of monetary instruments in excess of $10,000 (the "CMIR requirement) be filed with Customs. "Monetary instruments" is a term defined by statute to include currency or cash-equivalent bearer instruments such as traveller's checks or bearer checks and securities. The provision in section 5 would expand the definition to include instruments drawn on or by foreign financial institutions abroad whether or not in bearer form.

This is a direct response to the problem of drug money laundering through foreign bank drafts. Drug money launderers smuggle bulk currency or transmit it through a non-bank financial institution to foreign banks. They then purchase bank drafts or checks from the foreign banks, sometimes directly with the cash or sometimes

after first depositing it to an account at the foreign bank. Some of these instruments resemble cashier's check with a twist: they are dollar-denominated checks drawn by the foreign bank on its own account at a U.S. bank and sold to customers like cashier's checks. These instruments are easily transportable back into the United States and negotiated. Because foreign bank drafts and checks are not generally in bearer form, they are not currently subject to CMIR reports.

Treasury believes that subjecting the instruments to cross-border reporting will contribute to deterring and detecting their use. It is possible that issues of this kind may arise in the course of the Task Force's work.

Section 6 - Imposition of BSA Civil Penalties by Banking Agencies

This section directs the Secretary to delegate the authority to assess BSA civil penalties to the federal banking agencies (OCC, the Federal Reserve OTS, FDIC, and NCUA). From the inception of the BSA, Treasury has delegated compliance and examination authority to these agencies.

Under section 6, the Secretary would be given complete discretion to set the terms and conditions for penalties, including the ability to reserve the authority to assess or review penalties over a certain dollar amount. The provision stems from Congressional criticism of the handling of civil penalties in the past by the Treasury Office of Financial Enforcement (OFE) I want to emphasize that past delays with penalty processing have been corrected and that OFE has produced an unprecedented number of penalties in 1992 and 1993 with special emphasis on penalties against NBFIs, including casinos. In 1992 OFE assessed 18 penalties for over $4.5 million and in 1993 to date, 11 penalties for over $1.9.

Nevertheless, I am of the view that serious consideration should be given to delegation of this operational function not only to the banking agencies but to IRS for the non-bank financial institutions and to Customs for CMIR violators. All of these agencies have penalty authority and experience under other statutes. We have directed the Money Laundering Review Task Force to study the feasibility of penalty delegation as well as the penalty procedures and guidelines in force. We would delegate penalty authority under detailed guidelines, closely monitored by Treasury.

Sections 7 and 8 - Non-Bank Financial Institutions

Sections 7 and 8 address the problem of money laundering through certain NBFIs. For several years, the Committee and Treasury have grappled with this difficult issue. It is indisputable that as banks have become more active in prevention and detection of money laundering, money launderers have turned in droves to the financial services offered by a variety of NBFIs, from casas de cambio to money transmitters and check cashers. The majority of these are legitimate businesses that furnish needed financial services to segments of the population who are not inclined to use banks or have limited access to banking services.

The question of how best to use our authorities and resources to deal more effectively with the problem is an issue on the agenda for the Task Force. These institutions money transmitters, currency exchanges, check cashers, large sellers and redeemers of traveller checks and money orders -- are subject to BSA recordkeeping and reporting, with compliance and examination authority resting with the IRS Examination Division. While IRS has bolstered resources for this function the task is daunting. Estimates range from 50,000-150,000 of these institutions nationwide. The job cannot be done by Treasury/IRS alone. State licensing and regulation is essential to insure that these

businesses are run to offer legitimate financial services and that they not be purchased or exploited for illegal purposes. State licensea and regulation is meant to complement, not substituts, the BSA compliance responsibilities of the IRS.

Many states have made strides to license and examine various categories of NBFIs Texas, Arizona, New York, and Florida have made significant progress. Neverthelese, in the majority of states these institutions operats with little more than a general business license.

Section 7 expresses the view of Congress that there be uniform licensing and regulation of NBFI's including provisions under state law for civil and criminal penalties for failure to implement BSA compliance programs and criminal penalties under state law for failure to obtain a license. The Secretary of Treasury is to report to Congress after thres years, and annually thereafter, on the progress made by the states. The report is to contain recommendations on incentives and sanctions for states that have not taken adequate measures.

This will be a very extensive project for Treasury, but one which builds in our ongoing outreach efforts with states and one that we think will prove to be a worthwhile undertaking.

At the same time, Treasury will move forward to implement the authority under the Annunzio-Wylie Act to require suspicious reporting and compliance programs by NBFIs, continue to educate the NBFIs on their vulnerabilities and responsibilities, and investigate and penalize the NBFIs for money laundering and BSA violations.

Section 8 requires federal registration of NBFIs subject to BSA with Treasury. Criminal and civil penalties and civil forfeiture could be applied for failure to register. Registration would

work as a complement to the authority in the Annunzio-Wylie Act that directs Treasury to require depository institutions to identify their NBFI customers. This is an idea that is before the Money Laundering Review Task Force and has been discussed within Treasury for some time. Potentially this will result in the reliable identification of all NBFIs and a means to eradicate illegitimate ones.

This will be a very expensive and labor-intensive program to start and maintain. A number of practical details will need to be worked out. Nevertheless, Treasury is prepared to undertake this project. One option we may wish to consider, which would require legislative authority, is a registration fee which would be available to offset the costs of administering a registration program.

Sections 9 and 10 - Casinos

Sections 9 and 10 address two casino-related BSA issues. First, the bill specifies that Indian gaming casinos may be designated by the Secretary as financial institutions under the BSA. Currently, there is a reference in the 1988 Indian Gaming Regulatory Act (IGRA) to Indian gaming casinos being subject to currency reporting under section 6050I of the Internal Revenue Code Section 6050I requires a report of cash received in amounts over $10,000 received by trades or businesses not subject to BSA reporting The general statutory scheme is that a business files either under 6050I or the BSA, but not under both. Treasury has sought clarification of the statutory relationship prior to applying the more extensive reporting and recordkeeping authority of the BSA requirements to the tribal casinos.

Tribal casinos would logically be as vulnerable to money laundering and tax evasion to the same extent as non-tribal casinos. In saying this we do not suggest that tribal casinos

are more susceptible to money laundering and tax evasion than other casinos. The IRS is reaching out to tribal gaming and discussing the concept of currency reporting and anti-money laundering measures Treasury hopes to work with the tribes, the Department of the Interior the National Indian Gaming Commission, and Department of Justice to organize a conference with all the tribal casino operators to discuss prevention and detection of money laundering and other crimes.

Section 10 would revoke the 1985 exemption granted to Nevada casinos from the BSA by Treasury and prevent similar exemptions to classes of institutions in the future. The exemption was granted at the time upon the Secretary s finding that Nevada had, at that tima, a regulatory system which substantially met the BSA reporting and recordkeeping requirements for casinos. Under the agreement, the casinos file the equivalent of currency transaction reports with the State. Nevada then forwards the reports to the IRS where they are processed and included in the BSA data base. The Secretary may revoke the exemption at any time with 90 days notice.

In view of new Treasury regulations applicable to casinos and other differences between the Federal and Nevada system, we will be discussing the terms of the exemption and the differences between the two regulatory systems with the State of Nevada. Deputy Assistant Secretary Faith Hochberg has scheduled a visit to Nevada next week and will meet with casinos and state gaming officials. We feel that the State and the industry will be receptive to the need for adjustments.

At the same time the Task Force is assessing the Nevada agreement and the regulatory burden and effectiveness of the new casino regulation due to become effective in March for casinos nationwide. Modification may be made to those provisions. We are not seeking a legislative solution to this issue while the

relationship with Nevada and the regulatory scheme for casinos is under review.

Section 11 - Cashier's Check Study

This section would have Treasury study and report to Congress on the use of cashier's checks in money laundering and the possibility of additional recordkeeping measures for cashier's checks. For instance one suggestion would be to require banks to make copies retrievable by customer name or account rather than just chronologically as is generally the practice. The Task Force is reviewing all the recordkeeping provisions of the BSA and will be soliciting the view of prosecutors and investigators on any difficulties they have with what records are retained and how they are kept. We do not think a special report on cashier's checks is called for.

Other Legislative Measures

As the Committee is aware, there are a few other legislative actions necessary for Treasury anti-money laundering programs.

BSA Summons Authority

Treasury would like to see amendments to the BSA summons authority in 31 U.S.C. 5318 to make it a more effective tool to investigate BSA violations and to assist Treasury in responding to reports of suspicious activity, such as customer structuring of transactions to avoid triggering CTR reporting. The current authority is very limited in scope and purpose. It can only be used to request documents or take testimony from financial institutions and their employees and can only be used for civil purposes, for instance to perfect information for a civil penalty or civil forfeiture. What Treasury needs is a general purpose summons that can be used similar to an IRS summons, for civil and

criminal purposes, up until the point the matter is referred to Justice for litigation or prosecution.

In suspicious transaction situations, despite the statutory protection from customer liability financial institutions are reluctant to give full information about a customer and his transactions without legal process If a suspicious call comes or the suspicious box is checked on a CTR, an IRS criminal investigation agent cannot use the BSA summons to obtain enough information to assess whether or not the matter is worth pursuing. If the summons were used and the matter is ultimately developed as a criminal rather than civil case, IRS would be subject to legal challenge for improper use of a civil enforcement authority The only course now is to involve an Assistant U.S. Attorney, open a case and obtain a grand jury subpoena. This is an imposition on the agent s and the prosecutor's time and on the judicial system and simply cannot be done routinely in all suspicious situations. Treasury would like a simpler, less cumbersome method for evaluating how to proceed on suspicious transactions.

The limitation to financial institutions and their employees is also problematic. The focus of Treasury's interest in BSA violations especially CMIR violations, frequently involve persons beyond the financial institutions. Treasury needs to be able to use summons authority with respect to the person conducting the transaction, his principals, and other businesses.

We are discussing this matter with the Department of Justice who has expressed some concerns.

Smuggling of Currency through the Mail

As we have testified in the past, as BSA compliance by banks has improved, the smuggling of bulk currency and monetary

instruments, such as money orders, has become rampant. An amendment made to 31 U.S.C. 5317 by this Committee in 1986 specifies that the warrantless border search authority of the Customs Service extends to search for unreported currency or monetary instruments However the Postal Service has taken the position that this authority does not extend to letter class mail and packages. This creates an enormous loophole.

Envelopes and packages being transported by private couriers, common carriers, or by any means of transportation are subject to search as are envelopes and packages accompanying international travelers, or on their persons Customs can only open first class packages with a search warrant based on probable cause that the package contains unreported currency or monetary instruments.

We have been working with the U.S. Postal Service on a legislative solution. We hope to be able to provide the Committee with statutory language that will protect legitimate privacy interests in outbound mail without sacrificing law enforcement's ability to seize the illegal-source currency and monetary instruments.

8300 Dissemination and IRS Undercover Offset

Finally, there are two provisions pending with the House Ways and Means Committee introduced by Congressman Pickle earlier this year in H.R. 22. These provisions are supported by the Administration but have yet to be acted on to the detriment of our programs.

The first provision relates to the use and dissemination of reports of cash received over $10,000 filed by trades or businesses, under section 6050I of the Internal Revenue Code. Currently, the tax disclosure provisions of IRC §6103 effectively limit the use of these reports for tax enforcement purposes. The

reports have the same analytical use to law enforcement as currency reports filed by financial institutions and should be able to be used and analyzed to the same extent. Therefore, Congressman Pickle and the Administration seek authority to disseminate and use the reports under the same guidelines and safeguards as BSA reports to federal, state and local agencies for criminal and regulatory purposes. Temporary authority to disseminate to federal agencies for criminal purposes expired last November. Since that time, the analytic work of FinCEN and of the other investigatory agencies using these reports has come to a standstill.

The second provision in H.R. 22 would give IRS the same authority as other law enforcement agencies with substantial money laundering investigative authority to be exempt from certain fiscal and administrative provisions applied to day-to-day government activities Key among these provisions is the authority to offset expenses from undercover operations from the proceeds of the operation. Without this authority large-scale undercover operations such as establishing front currency exchange business, are cost prohibitive. This authority was also given in 1988 on a temporary basis but has sunset. While H.R. 22 would authorize this authority for a three year period, the Administration is seeking the offset authority on a permanent basis as is the case for Customs, DEA and FBI.

Conclusion

We welcome the Committee's partnership with Treasury in improving the efficiency and effectiveness of our program. Treasury and the Committee are working towards a common goal -- better balance and perspective on the roles and responsibilities of the Government and financial institutions in the fight against money laundering and better deployment of our respective skills and resources.

Statement of

Dennis E. Crawford
Chief, Criminal Investigation Division
Los Angeles District
Internal Revenue Service

Before the

Subcommittee on Financial Institutions Supervision,
Regulation and Deposit Insurance
House Committee on Banking, Finance and Urban Affairs

Anti-Money Laundering Bill of 1993

October 20, 1993

STATEMENT OF
DENNIS E. CRAWFORD
CHIEF, CRIMINAL INVESTIGATION DIVISION
LOS ANGELES DISTRICT
INTERNAL REVENUE SERVICE

BEFORE THE

SUBCOMMITTEE ON FINANCIAL INSTITUTIONS SUPERVISION,
REGULATION AND DEPOSIT INSURANCE
HOUSE COMMITTEE ON BANKING, FINANCE, AND URBAN AFFAIRS

OCTOBER 20, 1993

Mr. Chairman and Members of the Subcommittee:

I am Dennis Crawford, and I am the Chief of the Internal Revenue Service's Criminal Investigation Division in Los Angeles, California.

I thank you and the Subcommittee for this opportunity to appear and testify here today concerning aspects of the proposed "Anti-Money Laundering Act of 1993". My testimony will focus particularly on issues raised in section 7 of your proposed legislation. More specifically, I hope to illustrate how non-bank financial institutions (NBFI's) can be utilized to launder money.

From the beginning, the Internal Revenue Service has expended significant resources to contribute its unique financial investigative expertise to law enforcement's collective efforts against the proliferation of drugs and related criminal activity and the corrupting effects its illegal profits have had in this

country. From the field perspective, we welcome all initiatives and assistance from Congress which would make us more efficient and successful in our endeavors.

Anything I can say here in attempting to describe the scope of the money laundering problem in Los Angeles would still be understated. Our day to day experience tells us that when law enforcement begins to gain the upper hand in a given area, the criminal element finds new and different ways to circumvent those successes. One of those ways, continuing to grow in popularity since established financial institutions began tightening its anti-money laundering controls, is the use of NBFI's. These NBFI's include check cashing businesses, currency exchange houses, electronic money transmitters, as well as other established local businesses such as liquor stores and travel agencies acting as check cashers and money transmitters. All types of these NBFI's continue to flourish in Los Angeles as well as elsewhere. In the aggregate, NBFI's offer a complete array of banking services, comparable to those previously available only from full-service banks. Although many of these are legitimate businesses providing financial services to people who may have limited access to banking services, many of them have been utilized by criminal organizations for illicit purposes.

Government regulation, oversight, physical inspection and currency reporting requirements for NBFI's varies greatly by state and by local jurisdiction. For the most part, meaningful monitoring and enforcement is inconsistent, and sometimes non-existent. In California, for instance, check cashing businesses were once licensed by the State Department of Corporations. Licensing is no longer required and thus there are no compliance audits. Regulation and oversight of these businesses in many states might be considered passive at best. This results from having neither the legislation nor regulatory responsibility to require such oversight, and from not having the resources to conduct such programs even if they were on the books. The magnitude of the problem is underscored within the context of the huge volume of such businesses throughout our state which would be subject to such oversight.

The IRS Examination function plays a role in the oversight of these NBFI's pursuant to its responsibilities under the Bank Secrecy Act (BSA). IRS Examination's oversight role is to ensure compliance by the NBFI's with the currency reporting requirements of the BSA. This is done by identifying NBFI's, educating the NBFI's about the reporting requirements, and conducting compliance checks to assess and enforce compliance with the BSA.

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Mr. Chairman, my division in Los Angeles has been relatively successful through the years investigating and criminally prosecuting money laundering organizations which used NBFI's, in whole or in part, in their illegal activities. I would like to take a moment to give you and the Subcommittee a brief overview of one such case which typifies the ease by which check cashing facilities can become an integral and important tool for large money laundering operations. I wish to emphasize however, that these types of investigations are very resource intensive and time consuming. Criminal enforcement obviously cannot solve this growing problem without comprehensive administrative programs of regulation and oversight, at both the federal and state levels, to augment our efforts. Although IRS provides some federal oversight, the need for supplemental state regulation and oversight cannot be over emphasized.

The investigation I will describe began from information developed during a nationwide multi-agency Organized Crime Drug Enforcement Task Force (OCDETF) probe, code named "Operation Pisces". This particular investigation involved the IRS, the DEA, and several state and local agencies, in which undercover agents posed as money launderers to identify and investigate narcotics traffickers, money launderers, and couriers. It is just one of several investigations derived from leads out of "Operation Pisces". It was summarized in a 1990 issue of a national news magazine.

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The investigation involved the laundering of huge profits of a drug distribution empire from which it was estimated that, shortly after its inception, the principals were moving one ton of cocaine per week generating profits of approximately $4 million per month. The criminal organization involved in the case appeared to be the first direct connection between Colombia's Cali Cartel and street gangs in the United States. It matched a young 29-year old linked directly to Colombian narcotics traffickers, with a 25-year old Los Angeles man who had a natural affinity and talent for business.

Once underway, this organization quickly accumulated the wealthy trappings of success, varying from major real estate and luxury car purchases, to high rolling in Las Vegas and the financial backing of a Broadway play. International deals were negotiated in foreign cities in Denmark and Italy. From the outset, one of the main tools of choice for this organization to launder proceeds from the enormous sales of crack cocaine was check cashing businesses. It had already established three such businesses, and was in the process of purchasing others at the time law enforcement moved in and shut them down. During the investigation, $12 million in U.S. currency, and 500 kilograms of cocaine were seized, along with other assets.

Court authorized monitoring of telephone conversations revealed detailed instructions being relayed between

co-conspirators on how the check cashing businessas were to be set up and operated. As a reflection of how business was booming, the person responsible for the check cashing operations was overheard on the phone complaining to his boss about running around 24 hours a day and being worked too hard.

Evidence obtained confirmed the belief that this organization used these check cashing businesses to achieve a number of well defined goals. One such goal was to provide a viable cover story in case any of the participants were caught with large amounts of cash. This actually occurred when one of the money runners was stopped by police who discovered thousands of dollars in his possession. He tried to explain the money away by stating that it belonged to one of the organization controlled check cashing businesses for which he ostensibly worked.

Another goal, the most obvious one, is that the drug controlled check cashing businesses had plenty of dirty cash to run the check cashing service. This provided a clean and direct way to exchange dirty cash for third party checks while avoiding withdrawing large amounts of cash from banks. It even generated small profits from legitimate check cashing as well. The check cashing businesses also gave these criminals a safe place to count and store their cash, and it permitted them an entree to banks where they could deal in large amounts of money without raising suspicion.

After the extensive joint investigation and prosecutions were concluded, the two young men who headed this organization were each convicted and sentenced to prison terms of life plus 24 years, while five co-defendants received prison terms ranging from 11 to 20 years.

This significant investigation and prosecution is but one example of many in the Los Angeles area, as well as throughout the country, in which NBFI's have been utilized for the laundering of money. Although this example is an instance where the operators of the check cashing businesses were wittingly involved, countless others may be utilized unwittingly by professional money launderers.

In conclusion, I would like to reiterate the need for additional state regulation and oversight of the NBFI's such as proposed in H.R. 3235. If state licensing and regulation, including adequate background checks of proposed NBFI operators, were in effect at the time this criminal organization was active, it would have significantly impeded the organization's ability to openly operate the check cashing businesses.

Mr. Chairman, this concludes my prepared statement. I would be pleased to respond to any questions that you or the other members of the Subcommittee may have.

REVISED

TESTIMONY OF

TERRY J. JORDE
PRESIDENT AND CHIEF EXECUTIVE OFFICER
TOWNER COUNTY STATE BANK

on behalf of the

INDEPENDENT BANKERS ASSOCIATION OF AMERICA

before the

UNITED STATES HOUSE OF REPRESENTATIVES
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS SUPERVISION,
REGULATION AND DEPOSIT INSURANCE

of the
COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS

on the
"ANTIMONEY LAUNDERING ACT OF 1993"

OCTOBER 20, 1993

Mr. Chairman, my name is Terry Jorde and I am President/CEO of Towner County State Bank in Cando, North Dakota. I am also Vice-Chairman of the Bank Operations Committee of the Independent Bankers Association of America (IBAA). The IBAA is the only national trade association that exclusively represents the interests of community banks.

Introduction

Thank you for this opportunity to testify on the "Antimoney Laundering Act of 1993", H.R. 3235, introduced by the Chairman of the House Banking Committee Henry B. Gonzalez and co-sponsored by Chairman Stephen L. Neal. I would like to commend the Chairman's efforts to achieve more of a balance between law enforcement activities and paperwork burdens on financial institutions. Compliance and paperwork burdens are the biggest problems facing community banks today. A study conducted on behalf of the IBAA by the accounting and consulting firm of Grant Thorton concluded that the Bank Secrecy Act is one of the most onerous regulations identified by community banks. The study found that community bank employees spent over 2 million hours each year complying with the Act; community banks' annual BSA compliance costs were nearly $60 million.

We are heartened to see that the Chairmen have acted to alleviate some of these problems in the area of money laundering law. My testimony will include comments that could enhance the effectiveness of this legislation. We will also make further suggestions for reform.

First, let me tell you something about my bank and the area we serve. Towner County State Bank is a $23 million dollar institution with 12 employees. The area we serve is very rural and almost entirely agriculturally based. We are about 40 miles from the Canadian border.

My bank does not file many CTRs, about 3 or 4 per year. All of our employees are trained thoroughly in how to comply. If someone brings in $10,000 in cash, the whole bank knows about it and makes sure it is a legitimate transaction. We take compliance with the Bank Secrecy Act (BSA), the law which is amended in H.R. 3235, very seriously. No area is immune from criminal activity. Our employees are especially vigilant because of that and because the government has the authority to impose heavy penalties for noncompliance.

Discussion of bill

CTR exemption reform

We applaud section 2 of the bill that would reform CTR reporting by expanding, clarifying, and streamlining the CTR exemption process. The IBAA has suggested similar reforms in the past to reduce the compliance burden for banks and cut back the

avalanche of paper descending on the government.

Law enforcement agencies have no interest in obtaining CTRs on legitimate business deposits. The current system makes it difficult for community banks to grant exemptions because of the threat of significant civil penalties for erroneous interpretation of exemption requirements. The exemption process is further complicated by the fact we are often unable to obtain uniform interpretations of exemption procedures.

Section 2 would substantially clarify the exemption procedure by providing the Treasury Secretary authority to exempt specific depositors from the CTR requirement. This will be done in two ways. The Treasury will develop its own list of exempt depositors and will exempt other depositors upon application by banks. This has great potential to reduce the regulatory burden under the BSA. For example, churches and other depositors with predictable, but seasonal, major deposits do not qualify for exemptions under current procedures. They could be exempted under the proposed reform.

These new procedures will also clear up the confusion bankers have as to whether their other customers qualify for an exemption. This should end the practice of filing CTRs in almost every possible instance for fear of facing a penalty because of misunderstanding the requirements for exemptions.

H.R. 3235 provides a safe harbor from the threat of penalties for a bank whose exemption request has been granted unless the bank has supplied the Treasury with inaccurate or incomplete information. The IBAA recommends that the legislation be amended so that a bank lose the safe harbor only if it "knowingly and willfully" files inaccurate or incomplete information. Otherwise, a bank could lose its safe harbor if it innocently applies for an exemption based on inaccurate or incomplete information supplied by a depositor.

We also welcome the provision that directs the Treasury Secretary to redesign the CTR itself to make it less burdensome and more useful. Anything to streamline this process is desirable.

The IBAA wants to underscore our appreciation for the provisions of section 2. They truly could make a difference to a community bank.

Centralization for Processing CTRs in Treasury

The IBAA applauds the Chairman's efforts to establish accountability for processing all referrals of suspicious activity. Although referrals are filed with the IRS, bankers have long complained that no single federal agency acts on suspicious referral

forms. Anyone may report suspicious transactions, but no clear procedures have been available to coordinate them. Also, we understand that cases under $100,000 are frequently not pursued due to the limited resources of the law enforcement agencies. We hope that centralization will facilitate processing of all referrals.

In addition, information regarding disposition of reports will be very useful to the industry. Such reporting could remedy the problem of the inaction noted above and help gauge the usefulness of referrals.

Pilot Program for Bank Examiners in Identifying Money Laundering Schemes

The IBAA opposes this sort of pilot program. We think that the bank examiners' focus should remain on safety and soundness. Detecting money laundering should not be a prime concern of bank examiners. Also, given the President's orders to downsize government, including regulatory agencies, it would appear that such a program would be counterproductive.

Imposition of Civil Money Penalties by Federal banking agencies

There is no need to give the Federal banking agencies any more powers to assess civil money penalties. The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) amended section 8(i)(2), section 907 of the Federal Deposit Insurance Act, to give the agencies ample authority to assess civil money penalties. In fact, the agencies have the authority to impose a penalty of up to $1,000,000 or up to 1 percent of the bank's total assets, whichever is less, per day for the breach of any unsafe or unsound banking practice, or for the breach of any fiduciary duty which knowingly or recklessly causes substantial loss to the institution or gain to the other party.

In its most recent annual report to Congress, the OCC documented that in 1992 it assessed 146 civil money penalties on individuals and 36 on institutions, totalling about $4.1 million so far. Thus, the IBAA feels the federal banking agencies have enough existing civil penalty authority now and this section is largely unnecessary.

Apply regulation and coverage to check cashers, currency exchange, and money transmitting businesses.

Anecdotal evidence suggests that money launderers increasingly use uninsured financial institutions and non-financial businesses. Since these firms are not examined as frequently or intensively as insured depository institutions, this leaves an enormous loophole. Banks are bearing the brunt of the compliance burden when other entities that make financial transactions ought to be included. The playing field should be leveled. The IBAA is pleased that H.R. 3235 urges the states to extend uniform laws to licensing and regulating these businesses, assesses civil penalties for non-compliance, and requires federal registration for money transmitting businesses among other items. These

are steps in the right direction.

Treasury Study of Cashiers' Checks

We would like to suggest a few more items to include in the report. The study should also look at the extent to which cashiers' checks have been discovered in money laundering schemes and the extent monetary instrument logs have been useful in the identification and deterrence of illicit activities. We also believe that 180 days is not enough time to complete a report of this scope. We suggest that at least one year be allowed. The Bank Secrecy Act Advisory Group formed under the Annunzio-Wylie Antimoney Laundering Act of 1992 should be involved in this process and should be allowed to make recommendations. We also encourage the study to analyze the benefits against the costs of increased reporting of cashier's checks. There is already an existing paper trail for these instruments.

Other Recommendations

In addition to what is in H.R. 3235, the IBAA makes the following recommendations to lessen the regulatory burden of compliance with the BSA without any weakening of law enforcement efforts.

CTR and Log Requirements

It makes a great deal of sense to increase the $10,000 CTR reporting level and $3,000 log requirement to more realistic figures. We believe that the levels for CTRs and logs should be adjusted retroactively for inflation and annually thereafter. There is no magic level that will capture all illicit money laundering while exempting normal, legitimate, business and consumer transactions. Levels adjusted for inflation may not even be appropriate nationwide -- some have recommended higher levels be allowed - but whatever levels are adopted should be adjusted periodically to take inflation and other economic factors into account. Otherwise banks will file more and more useless CTRs and maintain longer and longer logs of perfectly legitimate transactions and the government will continue to be deluged with volumes of paper information it cannot handle.

The Treasury has acknowledged that some community banks with deposits under $100 million are not the top filers of Currency Transaction Reports. Therefore, the IBAA recommends that the Treasury be granted the latitude to ease the compliance requirements for banks with low reporting volumes. Such action would provide welcome relief to a number of community banks such as the $8 million dollar Nebraska bank that encountered only one transaction in 15 years that triggered Bank Secrecy Act reporting or record keeping. We also urge that banks that file less than 50 CTRs per month be allowed to file quarterly.

Civil Penalties

Ever-increasing civil penalties, and the "death penalty" for banks provided in the Annunzio-Wylie Anti-Money Laundering Act, have helped lead to a when in-doubt-file mentality among bankers. Bankers are strongly motivated to comply with the law, but draconian penalties can stimulate hyper-compliance which is particularly harmful in the money laundering area. It leads to useless filings on the part of banks and burdensome paperwork for law enforcement. We hope that the new exemption approach in section 2 of H.R. 3235 will significantly reduce these filings.

It is important to remember that tellers, often the youngest and the least experienced members of a bank's staff, are on the front line of BSA compliance. With potential penalties so high, bank management is very reluctant to give them much discretion. It would not be fair to the bank's shareholders or to the tellers themselves. Congress should reduce these penalties to more realistic levels.

Domestic Wire Transfer Reporting

The Annunzio-Wylie bill directed the Treasury, in consultation with the Federal Reserve Board, to implement requirements for international wire transfer reporting requirements by January 1, 1994. The bill directs the Treasury and the Board to establish domestic wire transfer record keeping requirements IF such records have a "high degree of usefulness in criminal, tax, or regulatory investigations or proceedings".

These two agencies have proposed rules to implement record keeping requirements for all wire transfers. We continue to oppose these requirements for domestic transfers. We believe there is insufficient evidence to indicate such record keeping will improve law enforcement's ability to detect or deter illicit activities. Additionally, we believe that the costs of maintaining the information, as proposed, significantly outweigh any potential benefits.

The IBAA questions the validity of the Treasury's and the Board's methodology or basis for determining that the information is useful. According to the proposal's commentary, the use of wire transfers, both domestic and international, has been "documented in several recent investigations conducted by Treasury and other law enforcement officials". It appears that the results of these few investigations provided the only justification for imposing domestic wire transfer record keeping requirements on the entire financial services industry.

We believe that it is unjust to saddle about 30,000 financial institutions with the burden of domestic wire transfer record keeping requirements based on "several" investigations. Furthermore, given the limited evidence of the Treasury's use of CTRs

and monetary instrument logs in general, the IBAA questions whether Treasury and other agencies have the resources or the disposition to use the proposed information to curtail illicit activities. We urge the Congress to direct the Treasury and the Board to study this matter further before implementing new reporting requirements.

Advisory Group

Even if the Treasury and the Congress adopt all of the recommendations we make, new issues will continue to arise. We have mentioned before in this testimony the fact that Annunzio-Wylie authorized a BSA Advisory group. That group is now just forming. We strongly recommend that Congress and the Treasury listen to the suggestions and recommendations that come from this group as the process moves along.

Conclusion

Chairman Gonzalez' bill, H.R. 3235, is a good start toward reducing the burden of compliance under the BSA for banks and toward uniform application of the law toward non-bank financial services entities. We applaud this good faith effort. However, more needs to be done now and on an on-going basis. We are willing to work with Chairman Gonzalez and others to solve these tough problems. Again, thank you for listening to our views on this matter.

TESTIMONY OF
SARA REDDING WILSON

on

H.R. 3235, THE ANTI-MONEY LAUNDERING ACT OF 1993

on behalf of

THE AMERICAN BANKERS ASSOCIATION

presented to the

COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS

SUBCOMMITTEE ON FINANCIAL INSTITUTIONS
SUPERVISION, REGULATION AND INSURANCE

UNITED STATES HOUSE OF REPRESENTATIVES

OCTOBER 20, 1993

Mr. Chairman and members of the Committee, I am Sara Redding Wilson, Senior Corporate Counsel with Signet Banking Corporation in Richmond, Virginia and a member of the ABA Bank Counsel Committee. I appreciate the opportunity to testify on behalf of the American Bankers Association on H.R. 3235, the Anti-Money Laundering Act of 1993. The ABA is the national trade and professional organization for America's commercial banks. The members of the American Bankers Association range in size from the smallest to the largest banks, with 85 percent of our members having assets of less than $100 million. Assets of our members comprise over 90 percent of the total assets of the commercial banking industry.

The American Bankers Association has long been involved in the debate on how to make Bank Secrecy Act compliance and money laundering deterrence more efficient. We welcome the opportunity to discuss the critical issue of how the government handles the large volume of information that it receives from financial institutions as well as our efforts in detecting and preventing money laundering. The U.S. banking industry applauds all efforts to prevent our financial system from being used as havens for drug dealers. We have argued that there is a need to review all of the requirements currently in place (whether legislative or regulatory) in order to insure that we are not unduly hindering the U.S. financial system, while adding little to our country's law enforcement efforts. Your bill goes a long way toward fixing the system.

The public is paying a substantial price for the anti-money laundering program. It is paid in two ways. Taxes and other Federal revenue pay for the efforts of the numerous agencies you have charged with responsibility for rulemaking, data gathering, supervision, investigation and prosecution. Higher prices are charged to banking customers to pay for our costs. Each year, my company spends approximately $400,000 to carry out its responsibilities under these laws. Many banks spend more – Signet is highly automated and has made the compliance process as efficient as possible. We are pleased that your bill will help save some of those costs.

ASSOCIATION ACTIVITY

The American Bankers Association has been involved in money laundering deterrence since the mid-1980's. Whether it has been testifying before the Congress or state legislatures, submitting written comments on regulatory proposals, or training bank employees, our association has been committed to active cooperation to stop the laundering of monies of drug dealers through financial institutions. The ABA and the industry as a whole understands the challenge facing law enforcement officials in attempting to combat drug trafficking and organized crime. The use of banks as havens for drug money is as abhorrent to us as bankers, as it is to the public in general. Therefore, we are pleased to report that our industry's response has been extensive, effective and ongoing. Mr. Chairman, we share your goals of developing a more efficient system.

Since 1985, ABA has trained over 100,000 financial institution employees on the Bank Secrecy Act, the Money Laundering Control Act and all the applicable law and regulations designed to solve this problem. The banking industry has achieved a high level of awareness of the laws and regulations regarding money laundering and our association has contributed significantly to that effort. During the debate on expanding the Bank Secrecy Act, our association worked closely with the Congress, various regulatory agencies, including the Treasury Department and others, in attempting to devise methods to deter money laundering. While we have opposed proposals that were seen as ineffective, the industry did support the creation of several statutes making money laundering and structuring

of currency transactions Federal offenses with strong penalties. In February of 1989, the American Bankers Association was the first trade association to create a task force on money laundering.

Mr. Chairman, we have been frustrated at the amount of reports filed by the industry and the limited utility to the government. The value to law enforcement is frequently hampered by limited resource allocation. There are too many agencies responsible for money laundering deterrence oversight and this detracts from government efforts at eliminating the problem. We constantly hear from bankers about confusing and often times conflicting interpretations received by our members on the rules and regulations that guide our industry. This current state of affairs not only can result in unfair examination ratings and civil penalties, but it can actually impede the ability of the United States to effectively fight the war on drugs.

CURRENCY TRANSACTION REPORTING

On October 26, 1970, the Bank Records and Foreign Transactions Act, commonly referred to as the "Bank Secrecy Act" was signed into law.[1] This law was enacted to "require certain reports or records where they have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings." The ABA believes that the regulations promulgated under this law are often not consistent with those goals established in 1970.

Instead, changes to the Bank Secrecy Act (BSA) over the years, have been a patchwork of regulations and laws that have added responsibilities to financial institutions without any thorough analysis of whether the law has fulfilled its intended purpose.

For example, in 1992, the industry filed an estimated 9.2 million Currency Transaction Reports (CTRs) with the Internal Revenue Service on routine cash transactions. A 1992 ABA survey found that for front-line bank staff, filling out Currency Transaction Reports is the most time consuming compliance burden. Our survey shows that banks fill out CTRs annually at a cost of almost $130 million. For the 368 banks over $1 billion in asset size, the burden was especially costly -- they filed 4.5 million CTRs at a cost of about $72 million.

The industry spent almost $10 million last year alone on software and hardware to handle Bank Secrecy Act compliance. While the banking industry is committed to fighting money laundering, from the comments received, it is clear that bankers believe the benefits to law enforcement do not justify the cost burden placed on banks. The frustration is clearly evident in the following comment from a banker:

> "We once had a structured currency transaction. A customer went to three of our branches to withdraw in excess of $10,000 cash. The bank has a system in place to identify multiple transactions. When the transaction was detected, a call was placed to the Treasury Department because of it being a suspicious transaction. Approximately two months later, the Treasury Department sent someone out to

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[1] P.L. 91-508.

investigate the transaction. The investigator stated that the $12,000 involved was not large enough to bother with. What was our risk if not reported?"

Another banker respondent summed it up as follows:

> "Given the volume of CTRs generated by the Bank Secrecy Act, one would expect an impact on the drug war. This evidently is not the case. In spite of the millions of forms compiled annually, there are few, if any, convictions generated by the database. While recognizing the value of CTR filing as a deterrent to criminal activity, for the more sophisticated money launderer, it serves as an impetus to creativity."

Large banks in urban areas find the burden particularly costly. For example, one banker responding to our survey said:

> "Our institution processes thousands of large commercial deposits daily, many grocery stores and retail chains. Many of these accounts cash checks for a fee as a service for their customers.
>
> As our state does not license check-cashing, these deposits are reported on a CTR every day. We process 4,000 CTRs annually. Of these, at least 50 percent are repetitive filings on long-term retail merchants that have banked here for many, many years. We estimate it takes an equivalent of one full-time employee to create the CTRs, 1/2 full-time equivalent employee to review and audit our CTR filings. Additionally, combining all Treasury log requirements and filing of criminal referrals due to structuring, another 1/2 full-time equivalent employee is required. Two employees -- one regulation."

The time for completing a CTR ranges from 20 to 30 minutes. Based on those parameters, financial institutions believe that it costs anywhere from $3 to $15 (exclusive of overall BSA compliance costs) to file a CTR. The cost range depends on whether the filing is manual or by magnetic media. The California Bankers Association polled its members and came up with costs as high as $60 per CTR. However, that all seems destined to change. We now would like to turn to our comments on H.R. 3235.

H.R. 3235

Mr. Chairman, your bill will help in a drastic reduction of routine or useless Currency Transaction Reports. As was pointed out in Chairman Gonzalez' October 7 press release:

> "Since the early 1970s, the Bank Secrecy Act (BSA) has required financial institutions to file Currency Transaction Reports (CTRs) on cash transactions over $10,000. Considering that 50 million CTRs have already been filed with the government and the General Accounting Office (GAO) estimates that the number will nearly double in the next four years, it is difficult to equate this effort with the government's prosecutions for money laundering."

We are particularly pleased at the requirement in Section 2 mandating that the Treasury reduce the number of CTRs filed by banks by a minimum of 30 percent. This is an important call to the government to ensure that CTR reports are used to deter and investigate money laundering. The system change to this exemption process will greatly assist in that goal.

CTR EXEMPTIONS

As the Committee knows, Bank Secrecy Act reporting requirements permit "exemptions" from CTR reporting under certain circumstances. The banking industry has long been confused over the inappropriate application of the Treasury exemption authority for certain businesses. Specifically, there are categories of businesses which financial institutions can exempt from the cash reporting requirements which seem to fly in the face of law enforcement needs (i.e., race tracks). In addition, various law enforcement agencies such as the Drug Enforcement Administration (DEA) and the Customs Service have frequently told bankers to narrow or extremely limit the amount of companies that are placed on their exemption lists. Bank examiners frequently misunderstand the nature and purpose of exemptions. Routinely, ABA hears reports from its members who have been criticized by bank examiners for "malicious compliance" when they restrict or eliminate exemptions. Yes, elimination of exemptions increases CTR volume, but compliance costs may actually decrease, and most importantly, the risk of a severe penalty is avoided. Last year, two banks paid major penalties due to the errors involving exemptions.

We argued in May that the existing exemption mechanism no longer works and should be revamped so that banks are required to report only transactions that have a "high degree of usefulness in criminal, tax, or regulatory investigations" as required by statute. Section 2 of your bill appears to be the answer.

Section 2 creates a two tier exemption system. Mandatory exemptions will be designated by the Treasury and include all transactions which a depository institution has with (1) another depository institution; (2) any U.S. government department or agency, or any political subdivision of any state, including an interstate compact between two or more states, which exercises any governmental authority on behalf of the United States, the state, or the political subdivision; or (3) any business or category of business where the CTRs have little or no value for law enforcement purposes. The Treasury will be required to publish the mandatory exemption list at least annually in the Federal Register. This proposal is consistent with IRS' own analysis that 40% of the CTR database is filled with routine information. We would strongly recommend however, that the "category of businesses" contemplated by Section 2 be as broad as the current exemptions allowed by Treasury.

We would recommend that the "notice of exemption" required by Section (d)(2) contain the entity's legal name, taxpayer ID number(s) and any other identifying information necessary for positive identification. The exact date or month for publication of the "Notice" should be specified in the Act so affected institutions could anticipate this recurring annual event. Changes to the list of entities identified in the "Notice" should not be mandatory until 90 days after publication in the Federal Register. Optional compliance should be allowed beginning on the date of publication.

The second part is a discretionary exemption list that includes transactions between a depository institution and its qualified business customers who most frequently engage in transactions which are subject to reporting requirements under the BSA. The qualified business customer must meet criteria determined by the Treasury to be sufficient to ensure that the purposes of the BSA are carried out without requiring a report with respect to such transactions. A discretionary exemption is effective only after the depository institution submits a list of its customers to the Treasury and the Secretary approves the application of the exemption to such customer. Finally, depository institutions must annually review its list of customers and resubmit the list for the Secretary's approval. We hope that the agency will review the list in a prompt and timely manner. It is recommended that the Section be changed to ensure swift review. The Treasury Department, like many Federal agencies, has been hampered by diminished resources. There must be adequate staff to handle this new authority. With the addition of certainty to the process as well as the safe harbor for banks, Congress can rekindle our industry's interest in bank initiated exemptions. However, efficiency is the key.

Most importantly, depository institutions that have been granted either a mandatory or discretionary exemption will receive a safe harbor from the penalty for failure to file a CTR. It is important that the word "knowingly" be inserted in proposed new Section 5313 (f)(A) to protect banks that might file false or incomplete information not knowing that the information was false or incomplete. This provision is crucial to gaining banker support for the bill and we commend its inclusion.

STREAMLINED CTRs

"Streamlining CTRs" should not turn out to be more expensive than leaving things alone. All changes are expensive -- even the ones that reduce requirements. Staff still has to be trained, software must be changed, forms must be reprinted and old ones destroyed, audit procedures will have to be revised and bank examiners will have to be retrained. Therefore, we support the concept of redesign, but banks must be consulted during this process if changes are to have any real effect.

SUSPICIOUS TRANSACTIONS

Mr. Chairman, we have long criticized the multiple filing process for reporting suspicious transactions to the government. With technology being what it is, it stands to reason that banks should only have to file with one agency. Section 3 of your bill will guarantee that result. This Section requires the Secretary of Treasury to designate a single agency of the United States to receive all suspicious transaction reports to coordinate the distribution of those reports with the appropriate law enforcement or supervisory agency. However, 3(a)(4)(C) seems to take away the benefit of this new design by allowing the agencies to still require multiple reports. This Section should be deleted.

The Secretary of the Treasury will then submit a report to the House Banking Committee no later that 1 year after the date of enactment of this Act, on the number of suspicions transactions reported to the Treasury and the results of such reports. This is a major improvement to the system. One major caveat: the industry is still strongly opposed to a "new" reporting scheme on suspicious transactions. We already have the Criminal Referral Form process.

BANKING AGENCY PILOT PROGRAMS TO IDENTIFY MONEY LAUNDERING SCHEMES

Pilot programs are good tests of ideas without commitment of huge numbers of tax dollars and we fully support the concept. We recommend that the FDIC and OTS also be given authority to establish the pilot program with the Office of the Comptroller of the Currency (OCC) and the Federal Reserve Board. Agencies should also be encouraged by the Act to enlist the assistance of bankers and others who can provide technical assistance.

NEGOTIABLE INSTRUMENTS DRAWN ON FOREIGN BANKS SUBJECT TO RECORDKEEPING AND REPORTING REQUIREMENTS

This Section would change the definition of "monetary instruments" in 31 U.S.C. §5312(3) to include, "as the Secretary of the Treasury shall provide by regulation, checks, drafts, notes, money orders, and other similar instruments which are drawn on or by a foreign financial institution and are not in bearer form." Among other things, this change in the definition of "monetary instruments" would subject non-bearer instruments drawn on or by a foreign financial institution to the reporting requirements for exporting and importing monetary instruments found in 31 U.S.C. §5316 and 31 C.F.R. §103.23.

While it may be desirable to have such reporting requirements apply to persons entering or exiting the United States with foreign financial institution instruments in their possession, this Section also would apply to such instruments in the interbank collection and reconciliation process. This would impose an impossible compliance burden for banks that handle large volumes of checks and other instruments for international collection, since there is no systematic way to cull instruments drawn on or by foreign financial institutions from instruments that are not. Under these circumstances, a bank would have no practical way of knowing whether it was handling instruments subject to the reporting requirements.

In light of these difficulties, banks generally are excused from filing reports on instruments in the interbank collection and reconciliation process. The current definition of "monetary instruments" includes bearer negotiable instruments and travelers' checks. Instruments in the interbank collection and reconciliation process are restrictively endorsed and therefore are not in bearer form. Travelers checks in the collection and reconciliation process are specifically exempted from reporting by 31 C.F.R. §103.23 (c)(8). Since this Section refers to instruments that are not in bearer form, it should exclude such instruments that are in the collection and reconciliation process.

It is not clear that this Section is intended to apply to instruments drawn on or by a "foreign financial institution," since the heading refers to instruments "drawn on foreign banks." The term "foreign financial institution" would appear to include broker-dealers, insurance companies, pawnbrokers, travel agencies, automobile dealerships, etc., as well as banks. (See 31 U.S.C. §5312 (a)(2) and (b)(2).) We would be pleased to work with this Committee to address this important issue.

DELEGATION OF CIVIL MONEY ASSESSMENT AUTHORITY

Our only concern with Section 6 is that the Treasury Department should retain final assessment authority of Bank Secrecy Act violations.

ANNUNZIO-WYLIE ANTI-MONEY LAUNDERING ACT OF 1992

Mr. Chairman, as we address your new bill, we would also like to take this opportunity to again comment on the potential effect of P.L. 102-550, the Annunzio-Wylie Anti-Money Laundering Act of 1992 on our industry. As indicated upon introduction, the intent of this law is to give the appropriate Federal depository institution regulatory agencies the power to revoke charters, terminate deposit insurance, and remove or suspend officers and directors of depository institutions involved in money laundering or currency transaction offenses.

The banking industry generally supported the main provisions of the new law relating to charter revocation because the proposed solutions did not fail to give the regulators the necessary flexibility to consider several important factors prior to closing the institution. However, there were several provisions that will hinder banking if the regulations are not carefully drawn.

IDENTIFICATIONS OF FINANCIAL INSTITUTIONS

This Section will require depository institutions to provide the name and other information about non-bank financial institution customers to the Treasury Department. Since there is an extremely broad definition of a "financial institution" and the ongoing transformation of many types of retail businesses into limited providers of financial services, this requirement will rapidly overload Treasury with millions of new reports. While we understand the intent behind this Section, it is not focused sharply on the problem and it is distressing that once again the banking industry is being asked to provide information to law enforcement which could be and should be derived from other sources.

It is troubling that because of the inability of the Treasury Department to get a handle on certain entities that are not providing sufficient information, Congress is requiring depository institutions to provide the information. With the creation of FINCEN, there must be information available outside of our industry to create a database to determine which non-bank financial institutions are evading reporting requirements. We continue to recommend that the corporate tax form (Form 1120) be amended to include a box for the entity to disclose its business form directly to the government. However, the focus of H.R. 3235 on money transmitters may be a useful tool toward solving our concern. We recommend expanding the definition of financial institutions under Section 8, so that registration of money transmitters could also be used to identify the financial institutions that were required under the Annunzio-Wylie law.

Until the scope and purpose of this initiative can be narrowed and an efficient implementation vehicle determined, we again urge you to suspend the rapidly approaching effective date of January 1, 1994.

PROHIBITION OF ILLEGAL MONEY TRANSMITTING BUSINESSES

The ABA strongly supports the provisions that would establish criminal penalties for illegal money transmitters. This is the only real deterrent to those entities that can continue to easily launder illegal monies. We were pleased to see Section 8 of your bill require the registration of money transmitters and urge amending the Section as pointed out above.

FUNDS TRANSFER REQUIREMENTS

The banking industry has commented on the regulatory decision by the Treasury and the Federal Reserve Board concerning wire transfers. Since the promulgation of the first proposal in 1989, the industry has feared an inappropriate response to the question of how funds transfers fit into the BSA compliance responsibilities of an institution. The industry was generally pleased with the joint rulemaking and our comment letter is attached for your information. Both the Treasury and the Federal Reserve Board deserve credit for promulgating a reasonable rule. However, Mr. Chairman, we believe that the January 1, 1994 effective date for the new regulation is not enough time to implement changes to the payment system. We have asked the agency to grant a transition period to implement these new regulations.

SUSPICIOUS TRANSACTION REPORTING

Annunzio-Wylie also gave the Treasury the authority to "require" banks and non-banks to report suspicious transactions. While the requirement for non-banks makes sense, any attempt by Treasury to create "another" reporting form for banks will be a major problem. We remain strongly opposed to the Treasury Department consideration of developing another new form for bankers.

ABA had recommended that with the creation of FINCEN and the acknowledgement that the agency will coordinate CRF filings for all agencies, that financial institutions be allowed to submit CRFs directly to FINCEN. This will eliminate tremendous duplication and costs to the banks. It is incomprehensible that six (6) agencies need separate copies of the CRF. Section 3 addresses this issue.

In addition, the use of guidelines on suspicious transactions similar to the publication issued by the OCC is desperately needed. Bankers need "red flags" to put into their policies. The creation of the Trends newsletter is a step in the right direction, but more must be done. We are hopeful that the Section 4 pilot program can help bankers gain necessary feedback.

OTHER ISSUES

We believe that there is a need for consistency in supervision and regulation of the financial industry. This can only occur if the government and the banking industry understand their respective roles. One way to do this is by educating the industry on the latest tactics and techniques utilized by money launderers. We do realize that this problem is more a result of diminishing resources and an

increased workload than any intentional disregard for supplying financial institutions with immediate information. However, it would be helpful if various banking and law enforcement agencies could immediately advise the banking community as to the latest money laundering trends, suspicious types of customers, and current illegal transactions so that the industry could put into effect the necessary safeguards to preclude such activities.

The BSA Bulletin Board announced by IRS, is an excellent step toward supplying centralized information on interpretations to banks, but much more is needed. After 22 years of compliance with the Bank Secrecy Act, one of major problems for bankers is the lack of guidance on interpreting the Act. The industry is unanimous in its call for an annual agency review or update of the BSA regulations such as exists with the Federal Reserve Board's "Official Staff Commentary" on Regulation Z and Regulation B.[2] The current Treasury system of infrequently releasing Administrative Rulings in the Federal Register is an unacceptable means of communication because it does not reach all members of the banking industry. Access to the Federal Register is not as widespread as many may believe. The Treasury Department has issued a myriad of "private rulings" over the years that have only been made available to the industry in forums or private sector publications. There is a critical need for a "staff commentary" that could include all previously issued rulings and interpretations of the Bank Secrecy Act.

The commentary system used by the Federal Reserve Board has had a dramatic effect on compliance because of the certainty that exists with a single published source that is updated annually. As mentioned above, the industry is dependent upon the government for information on the Bank Secrecy Act and money laundering deterrence in general and the lack of adequate information and feedback makes it difficult, if not impossible to protect against liability and the use of financial institutions as vehicles for money laundering. ABA does appreciate the efforts made by the Office of the Comptroller of the Currency (OCC), the Internal Revenue Service (IRS), and the Treasury Department in participating at industry-sponsored conferences and programs on money laundering. We would like to especially acknowledge the work of the Federal Reserve Board in assisting our educational programs. However, education is not a priority for all agencies and must become one if we are all to be partners in deterrence.[3]

The goals of the Bank Secrecy Act are only reached if banks have sufficient guidance from the government on general compliance and how to stop schemes of BSA avoidance.

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[2]Truth in Lending Act; (15 U.S.C. 1601 et. seq.) Regulation Z Staff Commentary (TIL-1. Supp 1-12 CFR Part 226), Equal Credit Opportunity Act (P.L. 94-239), Regulation B.

[3]The American Bankers Association has devoted considerable resources and time to Bank Secrecy Act education over the years. Through conferences, schools, seminars and publications, ABA has trained an estimated 100,000 bankers in the past eight years. Our commitment to BSA awareness has received commendations from the Customs Service, the Drug Enforcement Agency (DEA) and the Office of National Drug Control Policy.

ABA RECOMMENDATIONS

The American Bankers Association has been in the forefront of BSA compliance efforts (i.e., products, conferences, seminars) as well as the only group to actively participate in all debates on money laundering in Congress and with the regulators. Therefore, our recommendations to improving the BSA system are based on years of analysis and a good-faith desire toward resolving the inconsistency between regulations and effectiveness. Some of these proposals have been offered before, all have been actively debated, and most have received wide-spread support.

The first major proposal was a long-standing recommendation concerning the creation of a panel of experts or advisors from the government and the private sector to determine how to get the most out of the Bank Secrecy Act. ABA was pleased to see Congress pass this proposal last year to amend the BSA and create a permanent advisory group similar to the Federal Reserve Board's Consumer Advisory Council.[4]

A version of this idea was implemented by the Office of National Drug Control Policy for several years. A group of private-public sector experts was formed and met occasionally to discuss concerns with the government and money laundering deterrence efforts. Unfortunately, many of the issues discussed were never acted upon and the group no longer meets. Without a regular forum for Treasury officials to understand industry and law enforcement concerns with the BSA, regulations will continue to be promulgated without access to all relevant information. We are still anxiously awaiting the formulation of this strategy group.

Another recommendation is to amend Section 103.22 of the BSA to reduce the number of routine CTRs that are not "highly useful." If the exemption change in Section 2 is not successful in lowering routine reports, then we recommend raising the threshold for CTR filings. The over $10,000 amount for "cash in or cash out" of an institution during one business day has been in effect since the inception of the BSA. The figure is no longer a fair example of "highly useful" transaction information in the 1990's and serious consideration should be given to adjusting the amount. ABA understands that modification may adversely affect the current BSA education process and that CTR filers that are already on-line may have to make some adjustments, but the decrease in total filings will have a beneficial effect on cost and effectiveness to law enforcement. This is a perfect issue for an advisory group.

ABA recommends that the CTR level be raised to $25,000 for corporations, but remain at $10,000 for transactions by individuals. Economists have adjusted our $10,000 level to account for inflation and other appropriate factors and have found that the CTR amount would be closer to $36,000 in 1992 dollars. Therefore, we feel that the $25,000 threshold is workable and will continue to provide useful information to law enforcement. There has never been, to our knowledge, a serious discussion on the threshold.

We have also recommended changes to the CTR include simplifying the form. Section 2 of your bill, Mr. Chairman, addresses this overdue concern. The CTR is two pages long with another two pages

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[4]12 CFR 267.

of instructions. We urge that the private sector group to be created assist the government in developing a new form. Many discussions with IRS officials over the years have convinced our members of the need to redesign the form. To assure full public participation, we recommend that all reporting forms be made a part of the regulation and that changes be proposed for public comment.

ABA has recommended retaining certain information now required on the CTR such as:

- transaction date
- identifiers
- transaction amount
- date of birth
- amount in $100s.

Other proposals include simplifying identification requirements for "established customers;" eliminating "on behalf of" information for husband and wife joint account transactions; eliminating Part III information which is covered by the general record retention requirements; and simplifying essential information regarding the type of transaction.

An advisory group could also consider simplifying Part V information to retain only "1099-like" identification information on the bank where the transaction took place. For example, the bank name, address of headquarters and the taxpayer information number (TIN) could be on a simplified form. Other institutions have recommended eliminating Box 48 information regarding multiple transactions. It has been pointed out that this information is in bank records if needed.

The banking industry was also affected by the passage of the $3000 rule in the 1988 Omnibus Drug Bill and the subsequent promulgation of the regulation (103.29). While the mandate for the rule came from Congress, the implementation was clearly Treasury's responsibility.[5] Information on the utility of this requirement is sketchy at best, but the industry strongly believes that modifications can be made to this rule to ease the regulatory burden on the bank while providing sufficient information to law enforcement. For example, Signet Banking Corporation has 240 offices and in the 32 month since the regulations has been in effect, none of Signet's branches have received a request for records.

ABA recommends changing the $3000 rule to only require a "purchaser's log" for non-customers. All of the required information on customers would be established when the accounts are opened and be held for the BSA record retention period (5 years). At a minimum, the Act should be amended to eliminate the $3000 log requirement if the bank was required to file a CTR on currency transactions now covered by both rules. Currently, the two requirements are simultaneously triggered whenever a bank has knowledge that (1) an individual conducts two or more cash-in transactions during any one day totalling more than $10,000, and (2) one or more of those cash-in transactions involved the purchase of one or more negotiable instruments that total between $3000 and $10,000.

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[5]In the Advance Notice of Rulemaking, the Treasury Department asked the financial industry how best to implement the requirement.

As ABA argued in 1989 when the log requirement was first proposed, it is clear from the legislative history that both Congress and the Treasury intended that more expansive information under Section 5325 would be required of financial institution non-account holders but that limited information was necessary for account holders.[4] Our association would suggest that financial institutions be permitted to substitute the proposed log with an individual institution's own recordkeeping system for account holders for the purchase of cashier's checks, travelers checks, money orders, and bank checks provided that the information retained is in keeping with the information needed by Treasury. This suggestion would encourage banks to continue to sell those monetary instruments to account holders rather than opting to discontinue those sales.

This alternative would not affect the requirement as to non-account holders. Due to the recognition of common money laundering techniques, many institutions already have a policy of not selling the above-mentioned instruments to non-account holders. While our association does not recommend this policy, it is one that can easily be understood. The Treasury could offer the option of keeping a chronological log only for non-account holders. Many institutions have indicated that the use of chronological logs are labor-intensive so an option for those institutions would be desirable.

Mr. Chairman, deterrence works if risks are raised sufficiently. We believe that the risks involved in attempting to launder money through financial institutions are great and the reporting of suspicious activity is constantly on the rise. Congress can close out the possibility of laundering by improving the CTR reporting system. We ask this Committee to consider our comments as constructive criticism to a system that can work if all affected parties work as a team.

We thank you for the opportunity to present our views.

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[4]Deputy Assistant Secretary [Law Enforcement] Gerald L. Hilsher told the House Banking Committee on June 8, 1989 that the "intent of proposed section 5325 is to receive identification from money launderers who are not account holders at the financial institutions where they purchase monetary instruments with cash."

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October 4, 1993

Mr. Peter Djinis
Director
Office of Financial Enforcement
Office of the Assistant Secretary (Enforcement)
Department of the Treasury
Annex 5000
1500 Pennsylvania Avenue, N.W.
Washington, DC 20220

Mr. William W. Wiles
Secretary
Board of Governors of the Federal Reserve System
20th and Constitution Streets, N.W.
Washington, DC 20551

Re: Federal Reserve System
[Docket No. R-0807]
31 CFR 103
Department of the Treasury
Proposed Amendments to the
Bank Secrecy Act Regulations

Dear Mr. Djinis and Mr. Wiles:

The American Bankers Association ("ABA") is pleased to have this opportunity to comment on several proposed amendments to the Bank Secrecy Act that will require financial institutions to retain certain records relating to funds transfers. The ABA is the national trade and professional association for America's commercial banks, from the smallest to the largest. ABA members represent about 90 percent of the industry's total assets. Approximately 94 percent of our members are community banks with assets of less than $500 million.

These proposed regulations are the culmination of four years of debate on how the funds transfer system should be modified to assist law enforcement agencies in their effort to deter

money laundering. The ABA was unalterably opposed to the first proposed change to funds transfers in part because of its reliance on creating a new reporting system that would have dramatically hindered the payment system. However, the Treasury and the Federal Reserve Board have worked intensively on these new proposals and are to be commended for drafting a fair and equitable regulation. While the ABA does have some remaining concerns, the responsiveness of the agencies to banking industry comment is greatly appreciated.

Since the first proposed regulation was issued in 1989, the banking industry worked hard to familiarize the Treasury Department (as well as other agencies) on the complexities of the wire transfer system. As we approached the possibility of new regulations, government employees were asked to tour wire facilities, discuss the payment system with operations officials and seek additional information on this new area of potential reporting.

The concern over these potentially burdensome requirements led the industry to seek Congressional support for a "joint" rulemaking process that would enable the Federal Reserve Board, together with the Treasury Department, to:

> jointly prescribe, after consultation with State banking supervisors, final regulations requiring that insured depository institutions, businesses that provide check cashing services, money transmitting businesses, and businesses that issue or redeem money orders, travelers' checks or other similar instruments maintain such records of payment orders which --
>
> "(i) involve international transactions; and
> "(ii) direct transfers of funds over wholesale funds transfer systems or on the books of any insured depository institution, or on the books of any business that provides check cashing services, any money transmitting business, and any business that issues or redeems money orders, travelers' checks or similar instruments, that will have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings.

In addition, the Annunzio-Wylie Anti-Money Laundering Act (Section 1515 of P.L. 102-550) states that:

> Whenever the Secretary and the Board of Governors of the Federal Reserve System (hereafter in this section referred to as the 'Board") determine that the maintenance of records by insured depository institutions, of payment orders which direct transfers of funds over wholesale funds transfer systems has a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, the Secretary and the Board shall jointly prescribe regulations to carry out the purposes of this section with respect to the maintenance of such records.

What must be emphasized is Congressional concern about the scope of these new requirements. The factors that the joint rulemaking agencies must consider when implementing this mandate is instructive:

> In prescribing the regulations required under subparagraph (A), the Secretary and the Board shall consider --
>
> "(i) the usefulness in criminal, tax, or regulatory investigations or proceedings of any record required to be maintained pursuant to the proposed regulations; and
>
> "(ii) the effect the recordkeeping required pursuant to such proposed regulations will have on the cost and efficiency of the payment system.

Thus, these new regulations must be assessed in terms of their effect on law enforcement and the banking industry.

Effective Date

While the ABA is pleased that many of the burdensome aspects of the earlier proposals have been modified or dropped, we do remain concerned about the very short time period for financial institutions to get their systems adjusted to comply with these new regulations.

The ABA strongly suggests that Congress recognized the effect that a change to the payments system would have on financial institutions. Therefore, while the regulations for international transfers must be effective before January 1, 1994, we believe that the implementation period for these new regulations and those for domestic transfers must be much more flexible. ABA respectfully suggests that all new requirements be in place by January 1, 1995 or after the Fedwire Funds Transfer Format has been adapted to facilitate automation of compliance. This 12 month period is consistent with the 12 month period for implementation of the requirement relating to transmittal of funds. In addition, ABA recommends that the banking agencies not penalize financial institutions for non-compliance with these regulations until that time.

The ABA recommends that the Federal Reserve Board and the Treasury Department consider the extremely short time frame in which the financial institution industry must put into effect new recordkeeping requirements for domestic and international funds transfers when examining for compliance with section 1515 of Annunzio-Wylie. We strongly urge the agencies to allow for a reasonable period of transition for institutions that must now retain new records for funds transfers and transmittals of funds.

Since the notice of proposed rulemaking was published on August 31, 1993 in the Federal Register with a comment period to end on October 4, 1993, it is critical that financial institutions be given the flexibility to implement the new regulations over a longer period of time. Congress made clear its concern that the regulatory effect on the payment system be measured when finalizing these regulations when it passes section 1515. Therefore, we must have time to implement beyond the statutory "effective" date of "before January 1, 1994."

Retrievability

Several of our members expressed concern about retrievability of the records required to be retained under this regulation. While the proposal emphasizes that the records be "accessible within a reasonable period of time, taking into consideration the nature of the record, and the amount of time that has expired since the record was made," members are still concerned that this requirement could be burdensome. We recommend that flexibility be considered when seeking a record, especially when the request only includes a name without an account number.

The second related concern is whether or not there is liability to an institution that provides records to the government on a "name only" request because that will result in the gathering of records on many individuals that are not the target of the investigation. An agency statement on this issue would be extremely helpful.

Practical Difficulties in Achieving Full Compliance

Many of our members have pointed out that the information which banks will be required to maintain and be able to access is not currently stored in such a manner as to make it "readily retrievable." Therefore, we recommend that the agencies clarify the concept of "retrievability." The normal practice followed in the transmission of a wire is: 1) customer completes a wire transfer transmittal request 2) request is reviewed by wire transfer operators 3) wire is transmitted 4) wire is recorded on a chronological log 5) debit from customer's account is posted 6) wire transfer transmittal requests are stored physically or in microfiche. If institutional mergers have occurred the problem again multiplies, and if transactions are accepted for non-accountholders the records would be even less accessible.

At this time, many members tell us that nowhere in this process is a database generated which would allow electronic searches of wire records by name or account number. Apparently, the only way to recover wire information when an individual's name (Joe Jones) is given is: 1) recover the account numbers of all parties with that name 2) obtain copies of all account statements during the period concerned 3) individually review all transactions on the statements to isolate wire transactions if they are noted as such 4) finally, review the microfiche records of all wires in the chronological log and make copies of matches. If partial names are given such as J. Jones, the difficulty is obviously multiplied manyfold.

Community banks may transmit and receive several hundred wires a day. A typical regional bank may transmit and receive as many as 3,000-4,000 wires a day. This will result in a total of 3.75 to 5.0 million wires per year, and increase the cost of record retention and retrievability. Money center banks send many times even this number of wires.

Banks will record and store the required information. However we emphasize the manual nature, labor intensiveness, and expense of the searches that would have to be done. Given the business demands on depository institutions, compliance with requests for any substantial number of searches will be a major expense for many of our members. We hope that the agencies will recognize these concerns when examining for full compliance.

Exemptions

Another topic frequently mentioned by our members is exemptions under this new system. One member indicated support for financial institutions, at their option, to exempt certain transactions from any recordkeeping requirements to limit the burden imposed on them. The proposed exemptions could be similar to those available for CTRs. The institution suggested the following exemptions be incorporated into the regulation: (1) all funds transfers in amounts of $10,000 or less; (2) all funds transfers by businesses which are specifically excepted from CTR reporting; (3) all funds transfers by businesses which a bank can exempt unilaterally from CTR reporting in accordance with the standards provided in the Exemption Handbook published by the Treasury Department -- such exemptions would apply to funds transfers of exempted businesses which occur in the ordinary course of business on a regular basis; and (4) all funds transfers by any corporation listed on any major stock exchange, or by any public utility or government agency. They also suggested, however, that the government be able to target any specific customer or account for recordkeeping and reporting regardless of whether it qualifies for an exemption as discussed.

Definitions

Several members have asked for clarity in the definitions. Those concerns include:

a. The definition of "accept" includes the undefined term "executing." We request that the new regulations define "execute" to conform to the definition found in Section 4A-301(a) of Article 4A of the Uniform Commercial Code.

b. The definition of "payment order" seems to exclude drawndown requests from the definition. Several members are seeking confirmation of the exclusion of drawndown requests under the new rules.

c. The definition of "transmittal of funds" excludes "funds transfers" governed by the EFTA. Assuming that a transmittal of funds other than a "funds transfer" may be subject to the EFTA, one institution recommended that the reference to "funds transfer" found in the definition of "transmittal of funds" be replaced with "transmittal of funds."

Conclusion

As we commented in 1990, ABA remains concerned that an international wire transfer policy may have the side effects of slowing the global payments system, hindering legitimate world trade, and penalizing the international competitiveness of U.S. financial institutions. At a minimum, we feared that the U.S. financial services industry could be constrained in its ability to process international payments in an efficient and timely fashion. Furthermore, any material deterioration in the level of efficiency currently existing in the global payments system could accelerate the trend towards greater reliance on offshore dollar netting -- to the detriment of U.S. regulatory initiatives to monitor U.S. dollar payments.

Therefore, the ABA recommended that any amendment of regulations under the BSA addressing international wire transfers be measured against the industry's ability to comply with minimal service disruption and costs while addressing the need to stop the flow of illegal monies. Many of our members believe that this has been largely done within the confines of the statutory mandate. We commend the Federal Reserve Board and Department of Treasury for working cooperatively with the industry to address this potentially major problem.

Sincerely,

Philip S. Corwin

STATEMENT

of

SUSAN M. WOOLF
VICE PRESIDENT, BRANCH SERVICES
GREAT WESTERN BANK

on behalf of

SAVINGS & COMMUNITY BANKERS OF AMERICA

before the

COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS, SUPERVISION,
REGULATION AND DEPOSIT INSURANCE

HOUSE OF REPRESENTATIVES

October 20, 1993

Good morning, Mr. Chairman, Members of the Committee, I am Susan M. Woolf, Vice President, Branch Services, Great Western Bank, FSB, headquartered in Chatsworth, California. I am appearing today on behalf of the Savings & Community Bankers of America -- our national trade association representing more than 2,000 community-based lending institutions.

I am responsible for Great Western compliance with the Bank Secrecy Act (BSA). Great Western is $38 billion institution with 388 branches in two states (California and Florida). In my current position, I created a BSA department to ensure compliance with federal regulations; developed, published and instituted procedures for the BSA department; implemented weekly management reporting to branch regional vice presidents on BSA volume and error statistics; developed and instituted quarterly BSA training programs for our branch network; and supported an increase in currency transaction report volume of more than 100 percent over the last year.

Recognizing how valuable your time is this afternoon, I'd like to make my remarks as brief and specific as possible. I would like to summarize the wide range of activity by SCBA members in combatting money laundering, review the many positive features of H.R. 3235 and finally note a few areas where SCBA advocates some suggested revisions.

SCBA member institutions are committed to assisting in the battle against violation of our nation's criminal laws and, in particular, the use of insured depository institutions to "launder" the profits of illegal activities. Toward this end, SCBA has been actively working with the Federal Bureau of Investigation and the Treasury Department's Office of Financial Enforcement in a joint effort to combat money laundering. At various SCBA conferences, spokesmen from both these agencies have addressed our members. SCBA staff have also given speeches to the Financial Institution Fraud Unit of the FBI's White Collar Crimes Section. These sessions have provided a valuable opportunity to share ideas with agents from across the country, and then to relay these thoughts back to SCBA members on effective ways to combat money laundering.

Every year since 1974, SCBA has sponsored a Security Management and Fraud Prevention Conference. Last year over 200 security officers from across the United States heard about ways to combat money laundering activities as part of that program. In SCBA periodicals, concrete suggestions have been offered to operations officers so that they can better identify potential illegal activities and how to comply with the BSA.

SCBA commends the Treasury Department for conducting a comprehensive review of the recordkeeping and reporting requirements on financial institutions imposed by the BSA. An

Advisory Group is being put together by Treasury to recommend changes to the Bank Secrecy Act based on input from financial institutions. SCBA looks forward to this group getting underway expeditiously and the recommendations it will provide. SCBA also hopes these comments from the industry, such as those that are being provided today, will be fully incorporated in their report.

H.R. 3235 – The Anti-Money Laundering Act of 1993

Let me turn now to some thoughts on the specifics of H.R. 3235, the Anti-Money Laundering Act of 1993, introduced by Chairman Gonzalez and the distinguished Subcommittee Chairman, Mr. Neal. SCBA is always supportive of responsible reforms to existing depository institution statutes and regulations that balance safety and soundness and enforcement concerns with the ability to operate community-based banking institutions in an efficient manner. Many elements of H.R. 3235 go a long way toward meeting that goal.

Great Western, along with SCBA, supports Chairman Gonzalez' efforts to strengthen the government's hand in the fight against money launderers and at the same time make life more difficult for money launderers themselves. SCBA also commends Chairman Neal for co-sponsoring the legislation, and helping to move it forward.

Several provisions of H.R. 3235 present valuable revisions to the laws combatting money laundering. These provisions would streamline the very burdensome compliance regulations that now face depository institutions while expanding the scope of coverage to entities that may be involved in money laundering but are currently outside the Bank Secrecy Act.

In Section 2, efforts are made to reduce regulatory burden. With many millions of Currency Transaction Reports (CTRs) already on file, banks have been overwhelmed by the number of reports submitted and the perception that few prosecutions are ever begun on the basis of these filings. The number of CTRs being filed continues to skyrocket. Great Western currently processes an average of 1200 CTRs monthly. I am making this point because in the five years that I've been responsible for the program and have filed literally thousands of CTRs, Great Western has been notified of only one instance where this reporting has led to a conviction. Of course, we may have missed some others but this system does not appear to be a major source of investigative leads.

Nationwide, in the first six months of 1992 there were 3.84 million CTR forms filed. For the first six months of 1993, 4.69 million were filed-- a 29% increase. It is hard to believe that any agency can process, let alone analyze, this volume of paper work.

On a daily basis, banks and thrifts across America file 27,000 currency transactions at an estimated cost of $18 dollars each. This comes to $486,000 per day, or roughly $177 million per year.

CTRs are also time-consuming to complete. The paperwork requirements are oftentimes complex, particularly if you imagine the plight of a beginning level employee confronted with these forms. There are literally 55 boxes on the front of the document alone, and then you turn it over for a total of 85 boxes to check. And every box has to be completed exactly. I would suggest, in this regard, that some thought be given to weighing differently the importance of each entry in assessing compliance status. For instance, missing information about a depositor is weighted the same as if an institution forgets to list the date in six digits numerically, e.g. Jan. 1, 1993 instead of 01-01-93.

Besides branch review, Great Western operations staff looks at every piece of paper an additional three times to ensure accuracy. Toward this end, operations staff make over 1,000 phone calls a month back to branch personnel and to federal agencies. At the moment, we do not exempt as many businesses as we potentially could because the exemption monitoring process is so cumbersome. Reforms in this area should help financial institutions to do a better job.

H.R. 3235 would authorize the Treasury to substantially reduce the number of CTRs being filed and provide such much needed regulatory relief in this area. Great Western and SCB[illegible]A welcomes this constructive effort. The bill would not eliminate responsibility for reporting suspicious activities though routine CTRs would no longer be filed.

In Section 3, a single agency (designee) is authorized to receive reports on suspicious transactions, helping to eliminate duplication that now exists among the agencies which currently require separate notifications of suspicious activity. Vice President Gore's recent report on reinventing government noted that there are 140 federal agencies responsible for enforcing 4,100 federal criminal laws. The report also documented many fierce turf battles among such agencies as the U.S. Customs Service, Internal Revenue Service, Drug Enforcement Agency, and the FBI. To give one example from that report, the IRS has become a major player in the money laundering efforts to the point where less than one-half of its cases deal with its original mission of traditional tax law violations.

My staff at Great Western make frequent calls to various agencies requesting interpretive guidance on the BSA and often get differing advice. As a result, and in order to prove the differences of opinion, we log every call and response received. A single agency (designee) would eliminate this unnecessary procedure.

Section 4 requires the OCC and the Federal Reserve to establish a program to help examiners identify money laundering schemes. The legislation is unclear as to the scope of the proposed pilot program. We believe that this effort would benefit very much from the industry's active involvement. We at Great Western and other representatives of SCBA would welcome the opportunity to participate and assist in these types of programs.

Section 5 includes a range of items for different treatment under the law. SCBA is not prepared to comment on this section at this time. It will survey our member institutions to solicit comments on whether the listed items, such as special collection items, are easily identifiable and how they are currently processed.

Section 6 details new civil penalties. Great Western, like SCBA, is concerned with this section and hopes that the imposition of civil money penalties by federal banking agencies would be carefully circumscribed. Agencies should be required to work with a financial institution to resolve differences; the intimidating threat of civil money penalties should be used as a last, not a first, resort. Banks and thrifts, like Great Western, are doing their best to assist the federal government in clamping down on illegal activity. It seems particularly unfair to make civil penalties a first resort when these filings seem to play a minor role in identifying money launderers.

Sections 7, 8 and 9 of the bill expand the coverage of the money laundering statutes to require by check cashing, currency exchange money transmitting businesses and casinos to be subject to the BSA reporting requirements. For some time, SCBA has advocated that reporting be required by all retail and other businesses into which money launderers may direct illegal funds. This makes sense because banks are actively complying with the BSA, and as a result criminals have become more sophisticated and are moving their laundering to other businesses that deal in financial services – check cashing outlets, currency exchange businesses, and off-shore casinos. This, we presume, is more because of the back-tracking possibilities when other leads trigger an investigation than because of the values of the CTR filings initially. In California we have a number of check cashing and currency exchange businesses, so we particularly applaud the authors of the legislation to include these establishments.

One cautionary note should be raised with respect to section 9. All financial institutions must comply with the federal government's money laundering laws no matter what their asset size. It seems inconsistent that casinos or gaming establishments with annual revenues under $1 million might be exempt from this law. Also, as a result of the way this limitation is worded, it appears that to comply with the exemption provisions financial institutions would have to determine which casinos fall into this exempted category. We would prefer to look to the single agency (designee) to clearly define that process.

n 11 provides for a review of the use of cashiers' checks. SCBA would welcome the tunity to participate in any review by the Treasury Department of the extent to which instruments are vulnerable to money laundering.

CLUSION

Chairman, H.R. 3235 is a clearly positive step to strengthen the government's ability to nate money laundering while reducing the regulatory burden on financial institutions to ly with the law. SCBA welcomes the opportunity to work with you as this proposal s through the legislative process. We want to help. We simply do not believe that the nt system efficiently deploys the resources that we can devote to this purpose.

gs and Community Bankers of America appreciates the opportunity to share our ghts and experiences with you and your colleagues. I would be happy to answer any ions that you might have related to my knowledge of the Bank Secrecy Act as it affects t Western.

Statement of

JEFFREY SILVERMAN

President
and
Chief Executive Officer

M.S. Management, Inc.
Northbrook, Illinois

on behalf of the

NATIONAL CHECK CASHERS ASSOCIATION, Inc.

regarding

HR 3235

The Anti-Money Laundering Act of 1993

before the

United States House of Representatives

COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS

SUBCOMMITTEE ON
FINANCIAL INSTITUTIONS SUPERVISION, REGULATION AND DEPOSIT INSURANCE

Washington, D. C.

October 20, 1993

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Mr. Chairman, and Members of the Subcommittee, my name is Jeffrey Silverman. I am the President and Chief Executive Officer of M.S. Management, Inc. headquartered in Northbrook, Illinois. We are a privately owned company which provides a broad array of financial services, including check cashing, money order sales, and wire transfers to communities in three states.

I am testifying today on behalf of the National Check Cashers Association (NaCCA), the professional organization that represents more than 2,400 individual check cashing centers in 35 states, and is the industry's leading voice on legislative, regulatory, and business issues. My company is a founding member of the association, and I am currently serving as a Vice President and Member of the Executive Committee and Board of Directors.

We appreciate this opportunity to provide testimony regarding HR 3235, the "Anti-Money Laundering Act of 1993". Because this bill would have a substantial impact on our members and the communities they serve, we are pleased to help the Subcommittee gain a better understanding of the nature of our business.

Background

First, let me provide some background about the check cashing industry, the services it provides, and how the National Check Cashers Association was formed.

The professional check cashing industry in the United States is composed of approximately 4,500 neighborhood financial service centers, which cash more than 150 million checks annually with an aggregate face value of more than $45 billion. The check cashing industry employs approximately 25,000 local community residents in all corners of the United States.

In recent years, as a broader spectrum of consumers have sought increased financial service -- convenience -- including flexible hours and faster delivery of financial services, community-based check cashing centers have proliferated.

From its inception in the 1930's, as a response to the banking practices of the depression and changes in employer payment practices, the check cashing industry has evolved to become a pivotal link to the payments system for a substantial group of Americans, who through personal preference choose to utilize both check cashing centers and the banking system.

Just as many consumers prefer the convenience of specialty stores to large department stores, so, too, do many consumers prefer the convenience of check cashing centers to banks. Surveys indicate that 60 to 70 percent of check cashing clients maintain a banking relationship but prefer check cashing centers for reasons of convenience, ranging from quicker access to funds and neighborhood locations to more flexible hours and more rapid and efficient service. We are the 7-11's of the financial services industry, serving an important market niche.

Additional factors, such as the hidden costs of transportation and the use of valuable personal time also make check cashers more convenient for many than depository financial institutions.

Community Financial Services

Over the years, check cashers have introduced a range of financial services to complement basic check cashing. Although the cashing of checks -- including payroll checks, government checks, personal checks, and insurance drafts -- remains our industry's primary activity, other financial services are available at check cashing facilities. These include the sale of money orders, money wire transfers, welfare benefits and food stamp distribution, and public transit token sales.

Our industry has also been in the forefront of utilizing sophisticated electronic technology such as electronic filing of tax returns, a growing segment of our business. Check cashers are also leaders in the electronic distribution of government benefits and electronic collection of bill payments.

We are constantly expanding the roster of services offered to meet our customers' needs. Today, check cashing centers are responsible for the distribution of license plates and motor vehicle titles, accessibility to photocopying and fax machines, and the sale of postage stamps and lottery tickets.

Just as the services provided by check cashers have expanded over time, so have the markets they serve broadened. Check cashers continue to serve their traditional customer base in lower income communities where we hire and train local residents. More recently, as middle income consumers have demanded more convenient financial services, check cashers have expanded into their communities to meet their needs.

Industry Growth

The growth of the industry was stimulated, only in part, by the enactment of the Bank Deregulation Act of 1980, which among other actions eliminated deposit rate ceilings and led to explicit pricing for bank deposit services. Faced with increased service costs for maintenance of deposit accounts, consumers sought financial service alternatives, including check cashing centers, which provide more convenient and quicker access to funds as well as an array of ancillary services.

Small Business Industry

Check cashing is primarily a small business activity, with the vast majority of centers owned by local operators, many of whom own one to three check cashing stores. More atypical are firms that operate more than 50 stores. Several large check cashing operations in the U.S. are public companies, the largest of which operates more than 300 stores in several different markets.

National Check Cashers Association (NaCCA)

Professional check cashers throughout the United States formed the National Check Cashers Association in 1987. The organization has grown rapidly, with a current membership of 2,400 individual check cashing centers in 35 states. The Association was organized to foster the business and other interests of its members and to provide better service to customers and the community.

Among its accomplishments, NaCCA has forged adoption of a national Code of Conduct that specifies ethical standards for the industry, including disclosure of fees by posting rates, and providing receipts to customers. Not every industry has adopted such standards, and we are proud to have done so, even in our association's infancy.

Money Laundering

One of the top priorities of NaCCA is the education of our members about their responsibilities under the Bank Secrecy Act and other anti-money laundering statutes. We have devoted substantial resources to this effort during our association's short history. At each of our last several national conferences, we have invited the Internal Revenue Service and the Department of the Treasury to participate, in order to provide direct information about how to assist their efforts to fight money laundering. We have also had several meetings with these public officials for the same purpose. In addition, we have adopted a strict anti-money laundering code for our own members.

At our national convention held this past Columbus Day weekend, we unveiled the fruit of a major anti-money laundering project. We've developed a comprehensive compliance manual, written by Charles H. Morley, a recognized expert in the field. This manual was developed specifically for the check cashing industry. The manual will be distributed to all of our members within the next 60 days, and will also include guidebooks for use in each location. These materials include both a compliance plan for each store, as well as training and testing materials for our employees. We take this very seriously.

In addition, our members know that they are subject to IRS compliance audits. We learned at our recent meeting that IRS is tripling its audits of check cashers. Check cashers are well aware of the severe penalties which can be imposed for failure to comply.

Legislative Proposal

Knowing of the concern of many in Congress about the possibility of money laundering at non-depository financial institutions, NaCCA has previously supported Federal legislation to register money transmitters, including check cashers. A copy of our proposal is attached to this testimony. We are pleased to see that HR 3235 includes some of those recommendations. We do have some serious objections, however, to portions of the legislation that are not related to money laundering.

Registration of Money Transmitters

We applaud the authors of this legislation for including a registration program for money transmitters. Check cashers agree that enforcement of the Bank Secrecy Act and other Federal statutes would be aided if the Department of the Treasury could identify all those companies engaged in the money transmitting business. Enforcement officials would then have a compilation of businesses which should be filing currency transaction reports or keeping the required logs for transactions which meet the relevant threshold.

Our reading of the bill is that it is intended to require registration of all companies engaged in selling money orders, originating or receiving wire money transfers or cashing checks. Some questions have been raised about whether agents of wire transfer companies or the money order companies are included. It would be helpful to make clear that it is the intention of the Subcommittee that they are included.

Not including all the agents of these companies would severely limit the value of the legislation for the purpose of identifying those who ought to be reporting information under the BSA. For purposes of enforcing laws against money laundering, it is the function of the retailer that is significant, not whether a sign in the window says "check casher". If the Treasury Department is to have valuable information, it needs to know all the people selling money orders or wiring funds, whether they are located in travel agencies, convenience stores, liquor stores, or check cashers.

Inclusion of Criminal and Other Relevant Records

NaCCA suggests that Section 8, which provides for the registration of money transmitters, be strengthened by requiring money transmitters to include information on the registration form involving any records regarding criminal activity, violations of fiduciary duty, any fraudulent act, or license revocation. This would be useful to the Treasury Department in its enforcement effort, but more important, we believe it would serve as a deterrent to many who possess negative records from engaging in the money transmitting business. I'm not naive enough to believe that applicants would not make misrepresentations on a registration form, but at least that would open up the possibility of prosecuting them for any false statements regarding their records.

We do suggest one area for clarification in Section 8. In describing the information to be required on the registration form, the bill calls for including "The name and address of each person who (o)therwise participates in the conduct of the affairs of the business". That could be interpreted to include a wide range of people, including perhaps every employee, or even the company's outside accountants or attorneys. I assume the language is intended to include those who have an ownership interest in the business other than shareholders of publicly traded securities.

Uniform State Licensing

We must strongly object, however, to many of the provisions contained in Section 7. We fail to see how this section adds any ammunition to the fight against money laundering. Section 7 calls for the licensing of check cashers and money transmitters as businesses, an issue that is a consumer protection regulatory matter, not one of law enforcement.

A Diverse Industry

HR 3235 includes a "Sense of the Congress" resolution urging the states to establish uniform laws for licensing check cashers and other non-depository financial institutions. There is no findings section for this provision, so no reason at all is given to justify why state laws governing check cashers should be uniform. Our industry is diverse, with different product mixes, population density, and cost structures. There is no reasonable way to establish a uniform law that would fairly serve any consistent purpose. A review of the content of regulations in those states which now have licensing requirements would show differences in regulations based on the specific structure of the industry in each of those states. The nature of these regulations does not lend itself to uniformity.

The decision to license check cashers or money transmitter businesses should be left to the discretion of the individual states. Each state legislature can decide on its own whether consumer protection regulations are needed for our industry, and in fact they're already making those individual decisions. Check cashers are now regulated in 11 states, and more will be considering regulations this legislative session. Without calls for uniformity, or a "model", they are considering bills tailored to their individual circumstances, or deciding that licensing is not necessary. No compelling argument has been made for coercing all states to regulate in the same manner.

A few short years ago only 3 states regulated check cashers, and now the number is up to eleven. Others have considered, and rejected the idea. They ought to be free to do so. In fact, in some states there are only a few check cashers in business. Should these states have to establish a regulatory scheme, and one that does not provide any funding for that purpose?

A Better Model

The decision to establish a licensing program carries many implications for states, including the expenditure of scarce resources. If Congress wants to enact a resolution urging the states to develop a model statute, then it would be far better to advocate a model anti-money laundering bill. Such a resolution could urge enactment and strong enforcement of laws against money laundering on the state level to coordinate with the efforts of the Department of the Treasury envisioned under the registration program established by this bill. Such a model law should, of course, apply to all non-depository financial institutions as well as all entities which engage in currency transactions.

Experience has shown that licensing financial institutions does not prevent money laundering. It was necessary to adopt strict money laundering statutes, and to enforce them in order to have any impact. This is a far more direct and effective way to control money laundering in the United States.

The only relevance to money laundering at all in Section 7 relates to a requirement that these businesses develop procedures for compliance with the Bank Secrecy Act. The Annunzio-Wylie Anti-money Laundering Act already gives Treasury the right to require those procedures, so this language is not necessary.

HR 1448 and Rate Limits

I'd like to spend a couple of minutes discussing the provisions of HR 1448, "The Check Cashing Act of 1993" which was jointly referred to this Committee and the Government Operations Committee. It is relevant to this hearing because it would regulate check cashers -- perhaps out of business. NaCCA urges the Subcommittee to reject any attempts to add the provisions of HR 1448 to money laundering legislation.

As originally drafted, not only does HR 1448 call for the Federal Trade Commission to regulate the industry, but it also would set a specific fee limit of the greater of $0.50 or 0.85 percent of the face value of the check being cashed. After extensive study and hearings not one of the states regulating rates has determined such rate ceilings to be reasonable.

Because of the diversity of our industry, we strongly suggest that any consideration of check cashing rate structures be made at the state level, where individual business differences can be considered in a better manner.

There is little precedent for Congress to impose Federal price controls outside of a national emergency. Legislatively implementing an exact price for a service in every community in the nation without a national emergency is in extraordinary contrast to the principles of our free market economy.

Check cashers have most of the normal expenses shared by other businesses, including rent, salaries, depreciation, interest, insurance management and administration, and taxes. These cost factors will be dramatically different from location to location. The overhead costs in Manhattan are considerably different from those in Winston-Salem, North Carolina. Of course, the population densities of these locations are considerably different as well, and can have a definite impact on customer volume.

Therefore, the price of any service, including check cashing, may be determined in large part by the underlying cost structure of the particular location, the population density, and the resulting level of customer activity.

Risk

In addition to these normal costs, check cashers absorb a substantial risk in cashing checks. Unlike banks, there are no funds on deposit to hold until a check clears. Our own money is at risk in each transaction, and risk is an additional cost to the check casher.

Beyond these expenses, however, the check cashing industry is subject to the rigors of competition. We compete daily with banks, groceries, liquor stores, credit unions and a multitude of businesses which may cash checks. Some consider check cashing a loss-leader, and don't charge compensatory rates, or even cash them for "free" spreading costs over their other products.

Our business allows for a relatively low cost of entry, and our service is highly price sensitive. Competition quickly appears where there are favorable market conditions, and accounts for the doubling of check cashers during the past five to seven years.

All these factors -- cost plus competition -- go into the setting of fees.

Ten states have decided to regulate check cashing fees, and the level of rates varies and sometimes differs depending on the type of check to be cashed. These differences in some measure are related to the specific circumstances of the communities served in each state. If any government body is in a position to regulate rates, it is the state, not the Federal government.

Without question, the level of the rate limit in HR 1448 is at a less than compensatory level, <u>set below all states now regulating rates.</u> Merely raising the fee limit would not resolve the problem, for that still would not consider the specific concerns of each area.

As introduced, HR 1448 also would have the Federal Trade Commission sit as a regulatory body over check cashers, a role for which they are not suitable, having few employees and a large mission. I don't believe the Commission would relish getting into the business of day to day regulation of an industry.

We understand that a markup will soon be held in the Subcommittee on Human Resources and Intergovernmental Relations of Government Operations, and a new markup vehicle will be considered that would mandate states to regulate rates or else <u>shut down all check cashing businesses.</u> This draconian approach is of questionable constitutionality on issues of Federalism, and obviously our industry is concerned.

Considering the basic principles of our country's economic system, a legitimate law-abiding business should not be arbitrarily banned by the federal government simply because, through no fault of their own, a state legislature decided not to regulate that business; it is simply unfair and flies in the face of basic freedom as well as common sense.

In fact, we don't believe any credible case has ever been made demonstrating a problem so severe and pervasive as to require states to set rates for our industry. We continue to believe that each state is fully capable of deciding individually if rate control is desirable. In that regard, our customers have long been "voting with their feet" to use our services. For Congress to threaten to deny them their choice -- with no demonstration of a problem -- regarding where to obtain financial services smacks of a "big-brother" approach to economic choice. I urge you to reject any attempt to impose such a counterproductive and punitive measure on our communities.

Thank you for providing the National Check Cashers Association this opportunity. I'd be pleased to respond to any questions you may have.

NaCCA
National Check Cashers Association, Inc.
Financial Services for America's Local Communities

NaCCA and the Fight Against Money Laundering

The National Check Cashers Association (NaCCA), with a membership of more than 2,400 check cashing centers in 35 states, is the industry's leading voice on legislative, regulatory and business issues. NaCCA has taken several positive steps to vigorously combat the money laundering problem faced by its members.

Statement of Principles

As a first step, NaCCA forged adoption of the following Statement of Principles:

1) Check cashers should be at the forefront of efforts to combat the laundering of profits from illegal activities such as drug trafficking.
2) Management should make it clear to employees that they are strongly in support of all efforts to combat money laundering.
3) Check cashers should comply with all laws and regulations relating to money laundering. Management and employees should be trained in the procedures to be followed regarding the proper reporting of transactions and in the identification of possible money laundering schemes.
4) Management and employees should report suspicious transactions to proper authorities when there is sufficient reason to believe that illegal activities may be taking place.
5) Check cashers and their employees should cooperate and work closely with law enforcement authorities when the appropriate authorities request their assistance in investigations of money laundering.

Legislative Proposal

As a further step in the fight against money laundering, NaCCA has proposed that the U.S. Congress encourage a national registration program for check cashers, money order sellers,

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and agents of money transmitters. This proposal states that:

I. Congress will encourage states to establish a registration program for check cashers, money order sellers and transmitters of money by wire. States will be encouraged to use a standardized registration form to be drafted by the U.S. Treasury Department. States failing to adopt a registration program will be subject to a Federal sanction.

II. The bill will include all persons, including corporations, partnerships, individuals, and other entities engaged in check cashing or selling money orders or transfers of money by wire. This would include agents of money order or wire companies.

III. The U.S. Treasury Department will prepare a standard registration form for use by the states to include the following provisions:

   A. Identification of the principal owners and officers.

   B. Identification of the principal location and all branches of the check casher or money order seller transmitter of money by wire.

   C. Submission of fingerprints of owners and officers to the appropriate state agency.

IV. It will be a Federal crime for a person to cash a check or sell money orders or transmit money by wire without completing this registration process.

V. States will be required to submit names of registrants to Treasury upon request.

VI. Depository institutions will be required to obtain evidence of registration prior to opening an account for a check casher, money order seller or transmitter of money by wire.

VII. This Act shall not require any additional registration for check cashers, money order sellers, or transmitters of money by wire who are registered or licensed under a State statute on the date of enactment. All persons not licensed on the date of enactment who cash checks, sell money orders, or transmit money by wire, must register within 90 days of enactment or be in violation of this Act.

VIII. States may adopt reciprocal arrangements, so that registration in one state would be accepted by all other states.

IX. States shall establish non-bank financial institutions advisory boards, including representation from each type of institution required to register under this Act. The

advisory boards will be established to provide recommendations to the appropriate state agency establishing the registration program.

Manual to Combat Money Laundering

Most recently, NaCCA commissioned Charles H. Morley, a financial services security specialist, to author a manual to combat money laundering.

The manual, to be published this fall, will provide training guidelines on federal regulations designed to combat money laundering and provide a comprehensive analysis to the check cashing industry of common money laundering methods, currency reporting requirements, and civil and criminal sanctions relating to money laundering.

The manual will focus on transactions check cashing centers may encounter including the purchase of money orders and wire transfers.

Mr. Morley is a nationally recognized expert on money laundering and a frequent consultant to the federal government on these issues.

Statement of Janice Mileo

Vice President and Corporate Counsel

Travelers Express Company, Inc., on

H.R. 3235, the Antimoney Laundering Act of 1993,

Before the Subcommittee on

Financial Institutions Supervision,

Regulation and Deposit Insurance

October 20, 1993

Mr. Chairman and Members of the Subcommittee, Travelers Express Company, Inc., appreciates the opportunity to testify on H.R. 3235, the Antimoney Laundering Act of 1993. Travelers Express, headquartered in Minneapolis, Minnesota, is the nation's largest issuer of money orders. Travelers Express has been in the money order business since 1940. Since 1965, Travelers Express has been a subsidiary of The Dial Corp, located in Phoenix, Arizona. Travelers Express also has a division, Republic Money Order Company, based in Dallas, Texas.

Background Information

In my testimony today, I will provide you with some general background information on Travelers Express and the money order industry. I will then discuss those portions of H.R. 3235 that are of greatest concern to Travelers Express: the scope of the registration requirements and the need for uniformity in state licensing laws.

Travelers Express issues over 250 million money orders a year through a network of independent sales agents. These independent agents are located throughout all 50 states, the District of Columbia, and Puerto Rico and include over 40,000 sales locations. Travelers Express' agents include banks, credit unions, and other financial institutions, convenience stores, supermarkets, pharmacies, other retail locations, and check cashing outlets. In Washington, D.C., these agents include, among others, Giant Food and the Department of Labor Federal Credit Union. In your home State of North Carolina, Mr. Chairman, Travelers Express has approximately 1,400 agents, issuing over 6,000,000 money orders a year. Travelers Express is considered a financial institution

under the Bank Secrecy Act, and as such, is required to comply with federal reporting and recordkeeping regulations.

Travelers Express is licensed and regulated by the banking departments of the states in which it operates. Travelers Express submits detailed reports of its operations to the regulatory agencies, including audited financial statements and information about the agents who are authorized to sell its money orders. In addition, a number of states conduct on-site examinations of licensees to verify safety and soundness as well as statutory compliance. This extensive oversight demonstrates that the money order industry is a highly regulated business.

Although there has been much discussion of the "unlicensed money transmitters," there are a number of responsible, licensed companies, like Travelers Express, in this industry. The existence of some illegal, unlicensed money transfer operations should not be permitted to overshadow the valuable services provided by the legitimate nonbank businesses.

Money orders are a convenient and inexpensive payment alternative to checking accounts and other forms of payment. Most people who use money orders do so on a regular basis, buying two to three money orders a month to pay their rent, utility bills, car loans or other types of bills or payments. Money orders are an important financial service for low- and moderate-income consumers. Generally, fees charged to purchase a money order are low, usually between 75¢ and $1. These low fees and widespread availability are possible because issuing money orders is a highly automated, efficient, and simple process.

As mentioned above, money orders are distributed through a nationwide network of independent retail agents. The businesses which sell money orders, such as the neighborhood grocery store, the convenience store, or the drug store, do so normally as a service to their customers, not as a major portion of their business. For most of the agents who sell Travelers Express' items, money orders are an incidental part of their businesses.

Registration of Money Transmitting Businesses

Section 8 of H.R. 3235 proposes that money transmitting businesses, including those that issue money orders, register with the Secretary of the Treasury. As we understand it, the scope of Section 8 is to be limited to a "registration" function, so that Treasury has notice of businesses in this category. The approach is to have any substantive licensing or regulation at the state level, pursuant to the uniform law recommendations of Section 7; thus, the states would handle the licensing function, and Treasury would have the information necessary to enforce the money laundering requirements. Travelers Express supports this division

of responsibility -- we believe the states are best equipped to deal with the licensing issues, and the federal government is in many cases best equipped to deal with the specialized area of money laundering regulation. The registration process should be used to enforce existing requirements, not impose new requirements.

What we would not want to see is unnecessary duplication of the regulatory function. It should be clearly understood that this "registration" requirement is simply that, and no more, so that it does not grow to be a form of licensing which duplicates what the states are already devoting resources to. With resources so scarce, both for government and industry, it is important to focus those resources where they will be most productive. We are concerned with the very broad authority given to Treasury to request "such other information as the Secretary of Treasury may require". Unless this authority is limited, the Treasury registration process could easily grow into full blown licensing, duplicating the information already provided to the states.

Our second comment regarding Section 8 is also one of clarification. Travelers Express supports this proposal with the understanding that its agents "sell" money orders, but they do not "issue" money orders. This is a somewhat subtle distinction but one of great importance to Travelers Express. Under existing state laws, the money order company, which is the licensee, is defined as the issuer. The money order company's agents, in turn, "sell" rather than "issue" the money orders. Thus, Travelers Express' agents should not be required to register as money transmitting businesses unless they otherwise fall within the definition of a money transmitting business.

If any additional regulation is contemplated, care must be taken that the regulations are workable and not constantly changing. Most of Travelers Express' agents are small "mom and pop" type businesses. If these small businesses are overburdened with regulatory requirements, many would terminate their money order sales determining that it would cost them too much to stay current and comply with requirements. This would negatively impact the money order consumer as well. Money orders have remained an affordable and convenient payment instrument because of their widespread availability in retail stores, many of which are located in inner-city and low-income neighborhoods with few bank locations.

Based on our understanding of the scope of this provision, we support Section 8.

Uniform State Licensing

Section 7 of H.R. 3235 proposes, via the sense of the Congress, that the states should "establish uniform laws for licensing and

regulating" money transmitting businesses. Travelers Express supports this proposal as it would apply to money order issuers.

Travelers Express believes there presently exists adequate licensing and regulation of money order issuers. As previously mentioned, Travelers Express is licensed and closely regulated by the states. The primary focus of the states' regulatory efforts is to ensure the ongoing safety and soundness of the licensees.

Travelers Express, nonetheless, supports efforts aimed at improving uniformity in state licensing laws. Uniformity of state licensing laws is of great importance to national companies, such as Travelers Express, because it is extremely burdensome and costly to comply with a different licensing statute in each state. As part of Travelers Express' effort to comply with the various states regulatory requirements, more than 200 different, regularly scheduled reports are submitted to the states annually.

In an attempt to achieve some uniformity in state licensing laws, Travelers Express works closely with the Money Transmitter Regulators Association (MTRA). The MTRA is an organization of state regulators that works on issues related to the licensed industries they regulate. One of MTRA's endeavors has been the development and enactment of model licensing legislation. Travelers Express supports MTRA's efforts on model legislation and encourages states to adopt it. During the 1993 legislative session, Indiana became the first state to adopt the MTRA's model act.

Whether other industries should be subject to state licensing and regulation is a question Travelers Express does not have sufficient information to answer. Travelers Express, however, is of the opinion that any industry which holds the publics' money in a fiduciary capacity should be subject to some form of government oversight to ensure those funds are being maintained in a safe and sound manner. If the states choose to act on the sense of the Congress by expanding on existing laws governing money transmitting businesses, Travelers Express urges them to do so in a uniform manner consistent with the MTRA model act.

Streamlined Currency Transaction Reports

Section 2(c) of H.R. 3235 proposes redesigning the format of currency transaction reports filed by depository institutions. Travelers Express supports this proposal, but also recommends expanding it to include non-depository institutions.

We would like to take this opportunity to address another important issue -- the need for good communication between nonbank financial institutions, the regulators and law enforcement, and the need for further education.

The Need for Education

During the past few years, Travelers Express has initiated contact with a number of federal agencies and offices, such as the Treasury Department's Office of Financial Enforcement, the White House's Office of National Drug Control Policy, and the IRS' Criminal Investigation Division. Travelers Express' purpose in contacting these agencies has been to express a willingness to cooperate with federal authorities and to learn more about how money launderers are using nonbank institutions to launder their drug proceeds.

Travelers Express believes that the more it knows about money laundering and how it is being accomplished, the better able it is to educate its agents on what to look for as well as how to manage its own operations to prevent it from occurring. The federal government could greatly assist the educational process by preparing educational materials targeted to nonbanks. Such materials would include information about compliance requirements, how money laundering is accomplished, and the types of things to look for.

The company has worked closely with its local IRS CID office since 1987 on money laundering issues. In 1990 Travelers Express received a letter of commendation from the IRS for information that led to the seizure of over $700,000 from a money launderer. (See attachment to this statement.)

In discussing these issues with federal officials, Travelers Express has learned that most federal agencies need a better understanding of nonbank financial institutions, including the diversity among nonbank financial institutions' operations, such as money order companies, check cashers, money transmitters, and currency exchanges. Travelers Express has found these agencies and officials willing to take the time to listen and to discuss nonbank money laundering issues.

Conclusion

Travelers Express stands ready to work with the federal government to develop reasonable steps to prevent money laundering through nonbank financial institutions. We believe a continuing dialogue between the industry and federal regulators and law enforcement is very important. This dialogue can permit efforts that are more focused and do not increase costs and burdens across the board.

The establishment of the Bank Secrecy Act Advisory Group on Reporting Requirements by the Department of the Treasury is a positive step towards improving communication between industry and government. Travelers Express has applied to the Department to be represented on the Advisory Group. Nonbanks need to have a voice

in federal policymaking comparable to that of banks, especially since their operations vary considerably from banks.

Care must be taken when addressing any possible problems. The government must work with various nonbank industries to develop ideas which will address any problems without over-regulating these industries. Certainly, the first steps toward curtailing money laundering should be through increased resources to identify unlicensed, illegal money transmitter operations. It is of little help to increase requirements on legitimate businesses if illegal money transmitter operations continue to operate.

We appreciate the opportunity to testify before the Subcommittee. We look forward to continuing to work with regulators and law enforcement to identify and deal with any "bad apples," while at the same time avoiding undue burdens on the vast majority of necessary and routine money order transactions.

TravelersExpress
Dial Corp company

Travelers Express Company, Inc.
1550 Utica Avenue South
Minneapolis, MN 55416
612/591-3000

January 28, 1994

The Honorable Spencer T. Bachus, III
216 Cannon House Office Building
Washington, DC 20515-0106

Re: HR 3235 - The Antimoney Laundering Act of 1993

Dear Congressman Bachus:

During testimony last fall before the Subcommittee on Financial Institutions Supervision, Regulation and Deposit Insurance, you asked me to provide you with a synopsis of Travelers Express' anti-money laundering compliance program. Travelers Express has had such a compliance program in existence for a number of years and is constantly working to improve it Currently, we have retained a national expert on money laundering Chuck Morley, (former Chief Investigator to the Senate Permanent Committee on Investigations) to help us completely update our program.

Travelers Express will be launching its new anti-money laundering compliance program within the next few weeks. It will consist of a handbook to be distributed to all of our agents (more than 40 000 nationwide), a new compliance manual for Travelers Express employees, training sessions for employees and our entire management team, and improvements to all other aspects of Travelers Express' anti-money laundering compliance program. (The businesses which sell Travelers Express money orders, convenience stores grocery and drug stores, check cashers, banks, etc., are commonly referred to as "agents ")

Travelers Express is doing this even though it is under no government requirement to do so. In fact, Travelers Express has had an anti-money laundering compliance program for more than eight years. The program includes an operations manual, training, and information furnished to all of our agents. Nonetheless, Travelers Express management felt there was room for improvement, and to emphasize how important the issue is to the company, decided to retain Mr. Morley to help revise the existing program.

The Honorable Spencer T. Bachus, III
January 28, 1994
Page Two

Travelers Express has always taken money laundering seriously and has a long history of working closely with law enforcement to combat money laundering. (Enclosed is a copy of a letter of commendation Travelers Express received from the IRS for assisting in the seizure of more than $700 000 from a money launderer.) One way Travelers Express assists law enforcement is by providing information on money order sales that are out of the ordinary. Although not dispositive on the issue, these sales may indicate the items were used in a money laundering operation.

All Travelers Express money orders presented for payment are processed by the company. This entails microfilming and encoding by high-speed computers, as well as "reading" information off of the money order such as amount, serial number and agent who sold the item. The items are then stored for 90 days before they are shredded for recycling.

In order to identify potentially "suspicious" sales, Travelers Express computers have been programmed to identify money orders that fit certain parameters i e even dollar amounts purchased in sequence When the computer identifies such money orders they are automatically separated from the non-suspicious items for further review by our compliance staff. If, after review, the compliance staffer is not completely satisfied the money orders were used in a legitimate manner, the items are turned over to the IRS.

Travelers Express also notifies the agent which sold the items to remind its management of their money laundering compliance obligations This is done even though the agent may already have reported the suspicious sale to the IRS.

Travelers Express takes this extra step because it believes only through education will its agents be able to identify suspicious transactions.

It was an honor to be invited to testify before the Sub-committee and Travelers Express would welcome the opportunity to provide further assistance.

Sincerely,

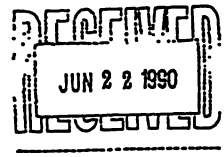
TRAVELERS EXPRESS COMPANY, INC.

Janice Mireo
Vice President--Corporate Counsel

L011894.1

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

ASSISTANT COMMISSIONER
(CRIMINAL INVESTIGATION)



Travelers Express Company
Attn: James K. Bill, President
1550 Utica Avenue South
Minneapolis, Mn 55416

Dear Mr. Bill:

Recently, your company provided information to the Internal Revenue Service, that resulted in the seizure of over $700,000 from a money launderer, who is believed to have been working for the Medellin drug cartel in Colombia.

As you know, money launderers use many different methods to hide illegal income. The purchase of a large number of small denomination money orders with currency, is one method commonly used. Your company has worked diligently with agents in our St. Paul District field office to help identify and prosecute these individuals.

Also, you have taken great care to inform company officials and agents of the currency transaction reporting requirements under Titles 26 and 31 of the United States Code. You and your company are excellent examples of the community involvement needed to assist our law enforcement agencies in fighting the war against drugs.

On behalf of the Internal Revenue Service, Criminal Investigation Division, I would like to personally thank you, for assisting our agents in identifying money laundering schemes, transacted through your company by unscrupulous individuals. We look forward to your continued cooperation in the fight against illegal drugs and other related activities.

Sincerely,

Ivar Mavics

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